

# TRANSCRIPT OF RECORD

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## Supreme Court of the United States

OCTOBER TERM, 1957

**No. 691**

UNITED GAS PIPE LINE COMPANY, PETITIONER.

MEMPHIS LIGHT, GAS AND WATER DIVISION;  
CITY OF MEMPHIS, TENNESSEE; MISSISSIPPI  
VALLEY GAS COMPANY, ET AL.

**No. 694**

FEDERAL POWER COMMISSION, PETITIONER.

MEMPHIS LIGHT, GAS AND WATER DIVISION,  
ET AL.

**No. 695**

TEXAS GAS TRANSMISSION CORPORATION AND  
SOUTHERN NATURAL GAS COMPANY, PETI-  
TIONERS.

MEMPHIS LIGHT, GAS AND WATER DIVISION;  
CITY OF MEMPHIS, TENNESSEE, AND MISSIS-  
SIPPI VALLEY GAS COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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No. 691. PETITION FOR CERTIORARI FILED DECEMBER 27, 1957

No. 694. PETITION FOR CERTIORARI FILED DECEMBER 30, 1957

No. 695. PETITION FOR CERTIORARI FILED DECEMBER 31, 1957

CERTIORARI GRANTED FEBRUARY 3, 1958

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IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 13,666

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MEMPHIS LIGHT, GAS AND WATER DIVISION; CITY OF  
MEMPHIS, TENNESSEE; AND MISSISSIPPI VALLEY GAS  
COMPANY, *Petitioners*,

v.

FEDERAL POWER COMMISSION, *Respondent*

UNITED GAS PIPE LINE COMPANY; TEXAS GAS TRANSMISSION  
CORPORATION; AND SOUTHERN NATURAL GAS COMPANY,  
*Intervenors*.

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On Petition to Review Orders of the Federal Power Commission

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**JOINT APPENDIX**

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**Excerpts from Oral Argument**

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Presiding Examiner: You may proceed with your argument, Mr. Goldberg.

Mr. Goldberg: Thank you, Mr. Chairman.

\* \* \* \* \*

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The February 27, 1956, decision of the Supreme Court in the Mobile case, I think we can all agree, was a bombshell. It shattered concepts which had been held almost unanimously for many years by the Commission, by companies subject to its

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jurisdiction, and even by purchasers of natural gas. Prior to the Mobile case it was the commonly held view that the Natural Gas Act provided two procedures for changing rates: One under section 4(d) of the Act, and the other under section 5(a). It was believed that under section 4(d) a natural gas company could change its rates simply by unilateral filing a proposal to go into effect on no less than 30 days, and that such a filing, it was also believed, initiated a rate proceeding.

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Mr. Morrow: May it please the Commission, my name is George Morrow, and I here speak on behalf of the City of Memphis and the Memphis Light, Gas and Water Division.

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Now, that requires an analysis of section 4 in the light of the Mobile decision. And the Mobile decision required a complete aboutface in respect to a great many conceptions that had been held by everybody, or almost everybody, for nearly 20 years, since the inception of the Natural Gas Act.

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For instance, everybody thought that section 4(d) was a procedure for changing rates, whereby the natural gas company came to this Commission and proposed an increase in rates, and this Commission, after considering it



and after a hearing, either denied or granted that increase in rate.

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Commissioner Digby: Mr. Boland, I understand you, I believe, to say that Texas Gas Transmission Company in entering into this service agreement with United Gas Pipe Line Company, did so with the understanding that United would have a right to file proposed increases under section 4 in accordance and subject to the effective tariffs on file?

Mr. Boland: I think that is basically what I have said, Judge. I am not quibbling. We say that the language in the form of service agreement in United's form of service agreement, as far as Texas Gas is concerned, clearly contemplated the right from time to time in United to file for a change in rate under section 4 of the Natural Gas Act.

Commissioner Digby: That is my question.

Mr. Boland: Yes, we recognize, and I think United recognizes, that we had a right to come in and assure ourselves that such proposed increases would be just and reasonable, and we always felt that we had a right to come before the Commission as to an existing rate to complain if we thought an existing rate too high, for an investigation under section 5(a). We and United as to the meaning of that language on the pleadings in this case are in complete agreement.

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ORAL ARGUMENT OF WILLIAM S. TARVER, ON BEHALF OF  
SOUTHERN NATURAL GAS COMPANY

The Court then went on to give two examples of these powers possessed by a natural gas company for change of rate as follows: "To establish ex parte and change at

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will the rates offered to prospective customers or to fix by contract and change only by mutual agreement the rate agreed upon with a particular customer.”

Now, are these examples which the Supreme Court used the only two ways in which a natural gas company can change its rates in the absence of aid from the Natural Gas Act? I think not. There is absolutely no reason in law or in common sense why a natural gas company and a purchaser of its gas can not

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lawfully agree that the rates specified in the contract may be submitted to arbitration by either of the parties. And that, in essence, is exactly what has been done by the parties to United's service agreements, which clearly contemplate that the Seller may submit to the Commission under Section 4(d) changes in rates with the Commission acting as the arbitrator between the parties under its powers granted by Sections 4(d) and 4(e), and in accordance with the standards established by Sections 4(a) and 4(b) of the Act.

\* \* \* \* \*

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Now to turn to those agreements between United and Southern which were put in issue by Mississippi Valley's motions. Southern and United are parties to two executed service agreements. In executing those two service agreements with United Southern under the language used to mean that United should have the right to file changes in its rates with the Commission under Section 4(d), without waiver, of course, of Southern's rights to oppose such changes in proceedings before the Commission concerning the filed change, and that the rate made effective by the Commission or permitted by the Commission to become effective was the rate contemplated by the contract.

\* \* \* \* \*

### **PRELIMINARY STATEMENT**

United Gas Pipe Line Company is a natural gas company engaged in the business of selling natural gas at wholesale in interstate and intrastate commerce.

The sale of natural gas is undertaken by the Company only under a Service Agreement with purchasers acceptable to the Company after consideration of its commitments to others, supplies of natural gas, delivery capacity and other factors deemed pertinent by the Company.

This FPC Gas Tariff is filed in compliance with Part 154, Sub-Chapter E, Chapter I, Title 18, of the Code of Federal Regulations, as promulgated by order of the Federal Power Commission in Docket No. R-107.

The filing of this Tariff shall not prejudice any claims and rights accruing to United Gas Pipe Line Company and its customers, as between themselves, prior to the effective date of this Tariff.

**Issued By:** A. D. Green, Vice President  
**Issued On:** [REDACTED]

**Effective:** [REDACTED]  
**AUG. 3, 1952**

**JULY 3, 1952**





(307)

UNITED GAS PIPE LINE COMPANY  
IPC Gas Tariff  
(Original Volume No. 1)

Original Sheet No. 10

RATE SCHEDULE DG-3J  
GENERAL SERVICE - DEMAND BASIS  
(JACKSON)

1. AVAILABILITY

This Rate Schedule is available to Mississippi Valley Gas Company (hereinafter called "Buyer") for the purchase of natural gas for resale in Jackson, Mississippi, and environs, from United Gas Pipe Line Company (hereinafter called "Seller"), and where Buyer has executed with Seller a Service Agreement.

2. APPLICABILITY AND CHARACTER OF SERVICE

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale, except such natural gas as is purchased for resale for Large Volume Industrial Use Only under "IND" Rate Schedules available to Buyer under this Tariff. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

17.5¢ per MCF for all gas delivered during the billing month up to that number of MCF obtained by multiplying the Billing Demand for the month by eight (8).

11.5¢ per MCF for all gas delivered during the billing month in excess of the number of MCF billed at 17.5¢ per MCF.

4. MINIMUM BILL

The minimum bill to Buyer for any billing month for service under this Rate Schedule shall be 50¢ per MCF of the Billing Demand in effect for the billing month.

5. BILLING DEMAND

The Billing Demand for each Billing Area Unit shall be the maximum volume of gas taken under this Rate Schedule by Buyer for each such Billing Area Unit in any one day during the 12 month's period ending with the last day of the current billing month. The greatest day's

Issued By: A. D. Green, Vice President  
Issued On: JULY 2, 1952

Effective: AUG. 3, 1952

RATE SCHEDULE DG-3J  
GENERAL SERVICE - DEMAND BASIS  
(JACKSON)  
(Continued)

5. BILLING DEMAND (Continued)

delivery during any month at a point where gas is delivered through a positive meter or meters without a volume and pressure gauge, shall be assumed to be 0.053 times the volume of gas delivered by Seller to Buyer at such point during such month.

Provided, if and when breaks in Buyer's facilities cause an extraordinary demand on Seller, which is in excess of the demand which Buyer would otherwise have made on Seller, the extra volume of natural gas delivered on account of such extraordinary demand shall not be included in determining the Billing Demand.

Provided further, that if Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer under this Rate Schedule on such day or days, up to the Billing Demand otherwise in effect for such billing month, the Billing Demand shall be reduced by an amount equal to the quotient arrived at by dividing the aggregate number of MCF of Seller's deficiencies in delivery on such day or days by the number of days in such month.

6. MEASUREMENT BASE

Refer to Section 1.3 of General Terms and Conditions.

7. HEAT CONTENT

Refer to Section 2.2 of General Terms and Conditions.

8. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated. *Sections 2.1 and 3.4*

Issued By: A. D. Greene, Vice President

Issued On: **[REDACTED]**

JULY 3, 1952

Effective: **[REDACTED]**

AUG. 3, 1952





(324)

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

Original Sheet No. 27

**RATE SCHEDULE G-3J  
GENERAL SERVICE  
(ALTA WOODS GROUP)**

**1. AVAILABILITY**

This Rate Schedule is available to Mississippi Valley Gas Company (hereinafter called "Buyer") for the purchase of natural gas for resale in Alta Woods, Bolton, Edwards and Raymond, Mississippi, from United Gas Pipe Line Company (hereinafter called "Seller"), and where Buyer has executed with Seller a Service Agreement.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale, except such natural gas as is purchased for resale for Large Volume Industrial Use Only under "LVI" Rate Schedules available to Buyer under this Tariff. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

17.5¢ per MCF for all gas delivered.

**4. MINIMUM BILL**

None

**5. MEASUREMENT BASE**

Refer to Section 1.3 of General Terms and Conditions.

Issued By: A. D. Green Vice President

Issued On:

JULY 3, 1952

Effective:

AUG. 3, 1952



**RATE SCHEDULE G-3J  
GENERAL SERVICE  
(ALTA WOODS GROUP)  
(Continued)**

**6. HEAT CONTENT**

Refer to Section 2.2 of General Terms and Conditions.

**7. GENERAL TERMS AND CONDITIONS**

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated. *See Terms 2.1 and 3.4*

Issued By: **A. D. Greene** Vice President

Effective: **AUG. 3, 1952**

Issued On: **JULY 3, 1952**



**RATE SCHEDULE IND-1J  
LARGE VOLUME INDUSTRIAL USE ONLY  
(REX BROWN POWER PLANT)**

**1. AVAILABILITY**

This Rate Schedule is available to the Mississippi Valley Gas Company (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale for large volume industrial use only to the Mississippi Power and Light Company, Rex Brown Power Plant in Jackson, Mississippi, and where Buyer has executed with Seller a Service Agreement for service under this Rate Schedule.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale for large volume industrial use only. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

10.5¢ per MCF for all gas delivered.

**4. MINIMUM BILL**

Commencing with the first January billing month following the initiation of service under this Rate Schedule there shall be a minimum bill which shall be on an annual basis. The minimum annual bill shall be the product of \$0.60 times the number of MCF delivered during the month of maximum deliveries during the 12 billing month period commencing with January. Should the sum of the monthly bills for each such 12-month period be less than the annual minimum bill as determined herein, then the amount that the annual minimum bill exceeds the sum of the monthly bills shall be due and payable with the twelfth month's bill.

Provided, however, that if Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas

Issued By: A. D. Greene, Vice President  
Issued On: **JULY 3, 1952**

Effective: **JULY 1, 1952**  
**AUG. 3, 1952**



**OUTLINED**

**RATE SCHEDULE IND-1J  
LARGE VOLUME INDUSTRIAL USE ONLY  
(REX BROWN POWER PLANT)  
(Continued)**

**4. MINIMUM BILL (Continued)**

required by Buyer under this Rate Schedule on such day or days, then the Annual Minimum Bill during any year in which such month or months occur, shall be reduced by an amount equal to the product of 10.5¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days during the year.

**5. ADJUSTMENT FOR HEATING VALUE**

The rate per MCF in this Rate Schedule is based upon the delivery of natural gas having an average total heating value of 1,000 British Thermal Units per cubic foot. Should Seller, during any billing month, deliver to Buyer gas containing less or more than 1,000 Btu per cubic foot, the monthly bill for such gas so delivered during such billing month shall be decreased or increased 0.1% for each Btu below or above 1,000 Btu per cubic foot.

**6. DETERMINATION OF DELIVERIES**

Where Seller delivers gas under this Rate Schedule and under another Rate Schedule to the same Buyer at the same delivery point or through the same measuring facilities, the volume of gas to be billed under this Rate Schedule shall be determined by readings of the measuring facilities used in serving the industrial consumer specified herein.

**7. MEASUREMENT BASE**

Refer to Section 1.3 of General Terms and Conditions.

**8. GENERAL TERMS AND CONDITIONS**

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated, *Sec. 1 and 3.*

Issued By: A. D. Granger, Vice President  
Issued On: **JULY 8, 1953**

Effective: **AUG. 3, 1953**



**RATE SCHEDULE IND-2J  
LARGE VOLUME INDUSTRIAL USE ONLY  
(JACKSON)**

**1. AVAILABILITY**

This Rate Schedule is available to Mississippi Valley Gas Company (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale for large volume industrial use only to Jackson Lamp Works, Filtrol Corporation, Knox Glass Bottle Works, and Buckeye Cotton Oil Company in Jackson, Mississippi, and where Buyer has executed with Seller a Service Agreement for service under this Rate Schedule.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale for large volume industrial use only. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

11.7¢ per MCF for all gas delivered.

**4. MINIMUM BILL**

Commencing with the first January billing month following the initiation of service under this Rate Schedule there shall be a minimum bill which shall be on an annual basis. The minimum annual bill shall be the product of \$0.70 times the number of MCF delivered during the month of maximum deliveries during the 12 billing month period commencing with January. Should the sum of the monthly bills for each such 12-month period be less than the annual minimum bill as determined herein, then the amount that the annual minimum bill exceeds the sum of the monthly bills shall be due and payable with the twelfth month's bill.

Provided, however, that if Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas

Issued By: A. B. Greene, Vice President  
Issued On: [REDACTED]

Effective: [REDACTED]  
AUG. 3, 1952

JULY 3, 1952

**RATE SCHEDULE IND-2J  
LARGE VOLUME INDUSTRIAL USE ONLY  
(JACKSON)  
(Continued)**

**4. MINIMUM BILL (Continued)**

required by Buyer under this Rate Schedule on such day or days, then the Annual Minimum Bill during any year in which such month or months occur, shall be reduced by an amount equal to the product of 11.7¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days during the year.

**5. ADJUSTMENT FOR HEATING VALUE**

The rate per MCF in this Rate Schedule is based upon the delivery of natural gas having an average total heating value of 1,000 British Thermal Units per cubic foot. Should Seller, during any billing month, deliver to Buyer gas containing less or more than 1,000 Btu per cubic foot, the monthly bill for such gas so delivered during such billing month shall be decreased or increased 0.1% for each Btu below or above 1,000 Btu per cubic foot.

**6. DETERMINATION OF DELIVERIES**

Where Seller delivers gas under this Rate Schedule and under another Rate Schedule to the same Buyer at the same delivery point or through the same measuring facilities, the volume of gas to be billed under this Rate Schedule shall be determined by readings of the measuring facilities used in serving the industrial consumer specified herein.

**7. MEASUREMENT BASE**

Refer to Section 1.3 of General Terms and Conditions.

**8. GENERAL TERMS AND CONDITIONS**

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated. See *Prods 2, 1 and 3.*



(354)

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

**SUPERSEDED**

USCA C1142 L.A. 1366-3  
Dist. of Cal. Original Sheet No. 57

G-4547 USCA DL - 1366  
1363

**RATE SCHEDULE PL3  
PIPE LINE SERVICE**

G-2503 L.A. DL L.A. 10081

**1. AVAILABILITY**

This Rate Schedule is available to Mississippi River Fuel Corporation, Southern Natural Gas Company, Texas Eastern Transmission Corporation, and Texas Gas Transmission Corporation (each of which is hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas for resale after transmission through Buyer's pipe line system, under a Service Agreement between Seller and Buyer dated prior to May 15, 1951.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement executed prior to May 15, 1951. Deliveries of gas hereunder up to the volume of gas Seller is obligated to deliver to Buyer under any such Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

For natural gas service rendered to Buyer each month under this Rate Schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

- (a) Demand Charge  
Per MCF of Billing Demand \$ .65 per month
- (b) Commodity Charge  
Per MCF of natural gas delivered 9.0¢

**4. MINIMUM MONTHLY BILL**

The Demand Charge for the month.

Issued By: A. D. [redacted] Vice President  
Issued On: [redacted]

**JULY 3, 1952**

Effective: [redacted]  
[redacted]

*Jan-3-19*



C-4507 - OSCA - DE # 13666  
# 1365  
C-2502 adlet DE. LA 0000

## 5. BILLING DEMAND

## 6. DEMAND CHARGE ADJUSTMENT

## 7. UNDEHYDRATED GAS ADJUSTMENT

## B. QUANTITIES

Issued By: A. D. Greene, Vice President  
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RATE SCHEDULE PL3  
 PIPE LINE SERVICE  
 (Continued)

G-250344 PL-414081

### 9. DETERMINATION OF DELIVERIES

If gas delivered by Seller to Buyer under this Rate Schedule and under another sales Rate Schedule of Seller is delivered through the same measuring facilities, then the volume of gas delivered under this Rate Schedule on any day shall be the difference between the total delivery and the volume of gas scheduled by Buyer's dispatcher for delivery under such other sales schedule.

If gas delivered by Seller to Buyer under this Rate Schedule and under a transportation Rate Schedule of Seller is delivered through the same measuring facilities, then the volume delivered under this Rate Schedule on any day shall be the total volume delivered less the volume delivered by Buyer to Seller for transportation under such transportation Rate Schedule.

### 10. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

### 11. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

### 12. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated Sections 2.2 and 3.3.

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JAN 3 1954  
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**RATE SCHEDULE T3  
 TRANSPORTATION SERVICE FOR  
 SOUTHERN NATURAL GAS COMPANY**

**1. AVAILABILITY**

This Rate Schedule is available to Southern Natural Gas Company (hereinafter called "Buyer") for the transportation of natural gas by United Gas Pipe Line Company (hereinafter called "Seller") of natural gas through Seller's pipe line extending from the Carthage Field, Texas, to a point near Monroe, Louisiana, where Buyer has executed with Seller a Service Agreement.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This Rate Schedule shall be applicable to all natural gas transported by Seller for Buyer through Seller's Carthage to Monroe pipe line. Transportation service rendered under this Rate Schedule up to the maximum daily quantity shall be firm and not be subject to curtailment or interruption except as provided in Sections 11 and 12.2 of the General Terms and Conditions.

**3. RATE**

For natural gas transportation service rendered to Buyer each month under this Rate Schedule; Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

(a) Monthly Demand Charge: 2.6¢ multiplied by the product obtained by multiplying the number of days in the month by the maximum daily quantity for such month.

(b) Commodity Charge:

(i) For all gas delivered by Buyer to Seller for transportation on each day up to the maximum daily quantity - 1.0¢ per MCF.

(ii) For all gas delivered by Buyer to Seller for transportation on each day in excess of the maximum daily quantity - 3.6¢ per MCF.

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**RATE SCHEDULE T3  
TRANSPORTATION SERVICE FOR  
SOUTHERN NATURAL GAS COMPANY  
(Continued)**

**4. MINIMUM BILL**

The minimum bill shall consist of the Demand Charge.

**5. DEMAND CHARGE ADJUSTMENT**

If by reasons of Force Majeure, Seller is unable to transport the volume of gas desired by Buyer up to the maximum daily quantity on any day during the billing month, the Demand Charge for such billing month shall be reduced by an amount equal to the product of 2.6¢ and the total aggregate number of MCF of Seller's deficiencies during such billing month.

**6. MAXIMUM DAILY QUANTITY AND DELIVERY TOLERANCE**

The maximum daily quantity shall be the maximum volume which Seller is obligated to transport for Buyer as said maximum daily volume is specified in the Service Agreement. Buyer shall tender gas to Seller for transportation in as nearly equal hourly quantities as operating conditions will permit. Seller shall endeavor to deliver to Buyer each day a volume of gas equal to that tendered by Buyer to Seller for transportation on such day. Because of necessary tolerance in the dispatching of gas, the volumes of gas delivered by Seller to Buyer may depart from the volumes tendered by Buyer to Seller for transportation, but any excess or deficiency in deliveries by Seller shall be balanced out as soon as practicable.

**7. HEAT CONTENT ADJUSTMENT**

The gas to be delivered hereunder by Buyer to Seller shall have a total heating value of not less than 1,000 Btu per cubic foot at a temperature of sixty (60) degrees Fahrenheit at an absolute pressure of 14.9 pounds per square inch and at the moisture content of the gas delivered. The gas to be delivered hereunder by Seller to Buyer shall have approximately the same total heating value of Btu per cubic foot as the gas which is delivered hereunder by Buyer to Seller with reasonable variations due to such gas being commingled.

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**RATE SCHEDULE T3  
TRANSPORTATION SERVICE FOR  
SOUTHERN NATURAL GAS COMPANY  
(Continued)**

**7. HEAT CONTENT ADJUSTMENT (Continued)**

with other gas in Seller's lines. In the event there is a deficiency of more than 30 Btu per cubic foot in the gas delivered by Seller to Buyer as compared with the total heating value of gas delivered by Buyer to Seller, or in the event there is an excess of more than 30 Btu per cubic foot in the gas delivered by Seller to Buyer as compared with the total heating value of the gas delivered by Buyer to Seller, then all such deficiencies or excesses below or above such tolerance of 30 Btu per cubic foot shall be adjusted by decreasing or increasing the quantities of gas delivered hereunder so as to make full compensation for such deficiency or excess in heat value above or below said tolerance of 30 Btu. Such adjustments shall be made in each billing month to cover any deficiency or excess occurring during the preceding month.

**8. DETERMINATION OF DELIVERIES TO BUYER**

If gas delivered by Seller to Buyer after transportation under this Rate Schedule and under a Sales Rate Schedule is delivered through the same measuring facilities, then the volume of gas redelivered by Seller to Buyer under this Rate Schedule shall be the same volume as that delivered by Buyer to Seller for transportation under this Rate Schedule.

**9. QUALITY OF GAS TENDERED BY BUYER FOR TRANSPORTATION**

The gas delivered to Seller for transportation hereunder will be commingled in Seller's pipe lines with Seller's own gas or with gas of other parties being transported by Seller, and with gas from other fields than Carthage Field; and the gas which Seller will redeliver to Buyer shall consist of such commingled gas. So long as the gas so delivered by Seller to Buyer meets the specifications relating to merchantability and quality set forth herein, such gas redeliverable to Buyer may be gas from any other source in lieu of all or any part of said gas so delivered by Buyer to Seller.

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UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

Original Sheet No. 68 D

**RATE SCHEDULE T3  
TRANSPORTATION SERVICE FOR  
SOUTHERN NATURAL GAS COMPANY  
(Continued)**

**9. QUALITY OF GAS TENDERED BY BUYER FOR TRANSPORTATION (Continued)**

The quality of gas tendered by Buyer to Seller for transportation and of the commingled gas delivered by Seller to Buyer shall meet all specifications of Section 2.1 of the General Terms and Conditions except Section 2.1 (e).

**10. MEASUREMENT FACILITIES**

Seller shall install, operate and maintain at the points of delivery of gas hereunder to Seller and the redelivery thereof to Buyer, the meters, instruments and equipment to measure, in accordance with the applicable General Terms and Conditions, the gas delivered hereunder.

**11. MEASUREMENT BASE**

Refer to Section 1.3 and 3.2 of the General Terms and Conditions.

**12. GENERAL TERMS AND CONDITIONS**

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except ~~to the extent otherwise indicated.~~ **SECTIONS 2.1 (4), 2.2, and 3.3**

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**101**



G 1142 - DC - Lit # 13149 (370)

G 2200 QROC - Lit # 13623  
4547  
10592

Original Sheet No. 69

G 9547 - GSA - DC - Lit # 13666  
- 13663

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

## GENERAL TERMS AND CONDITIONS

Each of the following General Terms and Conditions applies to each Rate Schedule contained in this Original Volume No. 1 unless otherwise indicated herein or in the applicable Rate Schedule.

### 1. DEFINITIONS

The following terms, when used herein or in any agreement incorporating these General Terms and Conditions, shall have the following meaning:

- 1.1 The term "day" shall mean a period of 24 consecutive hours beginning as nearly as is practicable to 7:00 a.m. or at such other time as may be mutually agreed to by Seller and Buyer.
- 1.2 The term "billing month" shall mean the calendar month.
- 1.3 The term "cubic foot of gas", for the purpose of measurement of the gas delivered hereunder and for all other purposes of this Tariff is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch and at a base temperature of sixty (60) degrees Fahrenheit, except as provided in Section 5 for farm taps and rural services and except as otherwise specifically indicated.
- 1.4 The term "MCF" shall mean 1,000 cubic feet of gas.
- 1.5 Rate Zones - The Rate Zones shall be as follows and are indicated on the map on Sheet 3:
  - (a) Central Rate Zone  
Extends from Fort Worth and Huntsville across the northern and eastern portion of Texas and the northern portion of Louisiana to the Village of Delta Point on the eastern edge of Louisiana.
  - (b) Jackson Rate Zone  
Extends from the State Line of Mississippi at Vicksburg through Alabama to Pensacola, Florida, and from Slidell and Mandeville, Louisiana, eastward.

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GENERAL TERMS AND CONDITIONS  
(Continued)

1. DEFINITIONS (Continued)

1.5 Rate Zones (Continued)

(c) Northwest Mississippi Rate Zone

Covers the group of towns in Northwest Mississippi which are not served from the integrated United Gas Pipe Line System.

(d) Texas Gulf-San Antonio Rate Zone

Extends south and southwest from Tenaha, Texas, to below Corpus Christi on the Gulf Coast and westward to San Antonio, Texas.

1.6 The term "Billing Area Unit" shall mean each single community and its environs served from any distribution system of Buyer hereunder, including any farm taps or rural service lines of Buyer and any other customers of Buyer served with gas hereunder from delivery point(s) to Buyer located nearer to such community than to any other community for which gas is delivered to Buyer under this Tariff.

1.7 The term "Maximum Daily Delivery Obligation" sometimes referred to as "Maximum Daily Quantity" shall mean the maximum volume of gas which Seller is obligated to deliver to Buyer in any one day.

1.8 The term "Large Volume Industrial Use Only" shall mean gas delivered hereunder to Buyer for resale to those customers of Buyer to whom Buyer sells gas for industrial use only in respective amounts exceeding, or estimated to exceed, 200,000 MCF per year.

2. QUALITY.

2.1 Applicable to "PL" and "T" Rate Schedules - The natural gas to be delivered under these Rate Schedules shall be merchantable gas, and:

(a) Shall be dehydrated by Seller and shall in no event have a water content in excess of seven (7) pounds of water per million (1,000,000) cubic feet of gas measured at a pressure base of fourteen and seven-tenths (14.7) pounds

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GENERAL TERMS AND CONDITIONS.  
 (Continued)

2. QUALITY (Continued)

2.1 Applicable to "PL" and "T" Rate Schedules (Continued)

per square inch and at a temperature of sixty (60) degrees Fahrenheit, as determined by dew-point apparatus approved by the Bureau of Mines.

- (b) Shall be commercially free from hydrogen sulphide and shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet as determined by quantitative test after the presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water to the gas for one and one-half (1-1/2) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas from the jet not impinging upon the test paper, and which qualitative test shall be deemed to be satisfied if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas.
- (c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet.
- (d) Shall not contain in excess of:
  - (i) Three per cent (3%) by volume of carbon dioxide;
  - (ii) Applicable to "PL" Customer:  
 Four per cent (4%) by volume of oxygen  
 Applicable to all other "PL" and "T" Customers:  
 Two per cent (2%) by volume of oxygen;
  - or
  - (iii) Two-tenths (0.2) gallons per thousand (1,000) cubic feet of those certain liquifiable hydrocarbons commonly referred to as natural gasoline, as determined by the charcoal adsorption method as prescribed by the American Gas Association in its testing code #101, effective January 1, 1933.



GENERAL TERMS AND CONDITIONS  
 (Continued)

2. QUALITY (Continued)

2.1 Applicable to "PL" and "T" Rate Schedules (Continued)

(e) Heat Content:

(i) Applicable to Texas Eastern Transmission Corporation:

In the event that the total heating value of the gas tendered for delivery by Seller to Buyer falls below 1,000 British thermal units per cubic foot, Buyer shall have the option to refuse to accept said gas so long as said total heating value remains below 1,000 British thermal units per cubic foot, provided, and to the extent, that any of Buyer's customers rejects the gas delivered by Seller hereunder. The British thermal unit content per cubic foot shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(ii) Applicable to all other "PL" customers:

In the event that the total heating value of the gas tendered for delivery by Seller to Buyer falls below 950 British thermal units per cubic foot, Buyer shall have the option to refuse to accept said gas so long as said total heating value remains below 950 British thermal units per cubic foot. The British thermal unit content per cubic foot shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure specified for measurement in the applicable Rate Schedule, and at the moisture content of the gas delivered.

(f) In addition to meeting the above specifications, the gas delivered hereunder shall be commercially free from dust, gum, gum-forming constituents, or other liquid or solid matter which might become separated from the gas in the course of transportation through the pipe line.

GENERAL TERMS AND CONDITIONS  
 (Continued)

2. QUALITY (Continued)

2.1 Applicable to "PL" and "T" Rate Schedules (Continued)

- (g) Except as otherwise specifically provided to the contrary in the Section 2.1, all measurements of gas required in this Section 2.1 shall be at a temperature of sixty (60) degrees Fahrenheit and at an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

2.2 Applicable to all Rate Schedules other than "PL" and "T" Rate Schedules

- (a) Heat Content - The gas delivered by Seller to Buyer shall have a total heating value of not less than 850 Btu per cubic foot. The Btu content per cubic foot shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure of 14.9 pounds per square inch, and at the moisture content of the gas delivered.
- (b) Permissible Impurities - The gas delivered by Seller to Buyer shall be reasonably free from water and other objectionable liquids, and from sand and other objectionable solids; and the gas shall not contain more than two (2) grains of hydrogen sulphide per one hundred (100) cubic feet.
- 2.3 Gas to be Natural Gas - The gas deliverable by Seller to Buyer shall be natural gas as produced in its natural state from the wells except that Seller may extract or permit the extraction of any of the constituents thereof.

3. MEASUREMENT

Determination of Quantity

- 3.1 The Sales Unit shall be one MCF.
- 3.2 Assumed Atmospheric Pressure - The average atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.



GENERAL TERMS AND CONDITIONS  
(Continued)

3. MEASUREMENT (Continued)

Determination of Quantity (Continued)

3.3 Orifice Meters other than for "PL" and "T" Rate Schedules -

When orifice meters are used for the measurement of gas hereunder, the computations of the volumes of gas measured shall be made in accordance with the following Sections (a) to (j) inclusive, as to all deliveries other than under "PL" and "T" Rate Schedules.

- (a) The orifice coefficient for each meter shall be calculated at the base pressure and base temperature set forth in Section 1 hereof, at a flowing temperature of sixty (60) degrees Fahrenheit and for gas of six hundred thousandths (.600) specific gravity.
- (b) The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meter or meters. The average of the record obtained shall be deemed to be the gas temperature for the period under consideration, and the orifice coefficient as calculated in (a) above shall be corrected for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.
- (c) The specific gravity of the gas shall be determined by a recording gravitometer so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, if Seller does not consider the installation of such recording gravitometer necessary, Seller shall make spot tests with an Edwards or other standard type specific gravity balance.

If the recording gravitometer is used, the average of the record obtained shall be deemed to be the specific gravity of the gas for the period under consideration and the orifice coefficient as calculated in Section (a) above shall be corrected for each one-thousandth (.001) variation from six hundred thousandths (.600). If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly on a day as near the first of the billing month as is practicable, or as



GENERAL TERMS AND CONDITIONS  
(Continued)

## 3. MEASUREMENT (Continued)

Determination of Quantity (Continued)3.3 Orifice Meters other than for "PL" and "T" Rate Schedules (Continued)

much oftener as is found necessary in practice. The result obtained from the test made on or near the first of the billing month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in Section (a) above shall be corrected accordingly for each one-thousandth (.001) variation from six hundred thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

- (d) Exact measurements of inside diameters of pipe runs and orifices shall be obtained to the nearest one-thousandth (.001) inch, which measurements shall be used in computations of coefficients.
- (e) Pressure taps for meter installations shall be taken from pipe runs two and one-half (2-1/2) inside pipe diameters upstream and eight (8) inside pipe diameters downstream from the orifice.
- (f) All orifice meter computations required in this Section 3 shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the orifice coefficient, the calculation of "I" shall be carried to six (6) decimals and "C" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 in Metric Metal Works Bulletin E-2 (Revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures, unless the first digit is "1", in which case five (5) significant figures shall be used.
- (g) In determining the volume of gas delivered through the orifice during a period, either the observation method or the orifice chart integrator shall be used in reading the

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Revised On: ~~July 3, 1952~~

JULY 3, 1952

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GENERAL TERMS AND CONDITIONS  
 (Continued)

3. MEASUREMENT (Continued)

Determination of Quantity (Continued)

3.3 Orifice Meters other than for "PL" and "T" Rate Schedules (Continued)

meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the orifice coefficient, corrected in accordance with Sections (b) and (c) above, to obtain the gas volume for that chart.

- (h) When the average delivery pressure on the orifice meter chart is 100 pounds per square inch gauge or more, the volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:
  - (i) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration.
  - (ii) The average temperature for the period under consideration will be determined as provided in Section (b) above.
  - (iii) There shall be selected from the table of multipliers shown in Section (j) hereof, the multiplier corresponding to the average pressure and the average temperature as determined in (i) and (ii) above.
  - (iv) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas determined in the manner hereinabove set forth by the multiplier selected in (iii) above.



3.3 (J) Boyle's Law Deviation Multipliers for orifice meters.

Average Pressure PSIG		Average Temperature = °F										Average Pressure PSIG	
0-49		40-44	45-49	50-54	55-59	60-64	65-69	70-74	75-79	80-84	85-89	90-94	
Average Pressure PSIG	0-49	1.004	1.004	1.004	1.003	1.003	1.003	1.003	1.003	1.003	1.003	1.003	0-49
	50-99	1.009	1.009	1.009	1.008	1.008	1.008	1.008	1.007	1.007	1.007	1.007	50-99
	100-149	1.014	1.014	1.013	1.013	1.012	1.012	1.012	1.011	1.011	1.010	1.010	100-149
	150-199	1.019	1.018	1.017	1.017	1.016	1.016	1.016	1.015	1.014	1.014	1.014	150-199
	200-249	1.024	1.023	1.022	1.022	1.021	1.020	1.020	1.019	1.018	1.018	1.017	200-249
	250-299	1.029	1.028	1.027	1.026	1.025	1.024	1.024	1.023	1.022	1.021	1.021	250-299
	300-349	1.034	1.033	1.032	1.031	1.030	1.029	1.028	1.027	1.026	1.025	1.024	300-349
	350-399	1.039	1.038	1.036	1.035	1.034	1.033	1.032	1.031	1.030	1.029	1.028	350-399
	400-449	1.044	1.043	1.041	1.040	1.039	1.038	1.036	1.035	1.034	1.033	1.032	400-449
	450-499	1.050	1.048	1.046	1.045	1.043	1.042	1.040	1.039	1.038	1.036	1.035	450-499
	500-549	1.055	1.053	1.051	1.049	1.048	1.046	1.045	1.043	1.041	1.040	1.039	500-549
	550-599	1.060	1.058	1.056	1.054	1.052	1.051	1.049	1.047	1.045	1.044	1.042	550-599
	600-649	1.066	1.064	1.062	1.059	1.057	1.055	1.053	1.052	1.049	1.048	1.046	600-649
	650-699	1.072	1.069	1.067	1.064	1.062	1.059	1.057	1.055	1.053	1.052	1.050	650-699
	700-749	1.077	1.075	1.072	1.069	1.067	1.064	1.061	1.059	1.057	1.055	1.053	700-749
	750-799	1.083	1.080	1.077	1.074	1.071	1.068	1.066	1.063	1.061	1.059	1.056	750-799
Average Pressure PSIG	800-849	1.089	1.085	1.082	1.079	1.076	1.072	1.070	1.067	1.064	1.062	1.060	800-849
	850-899	1.094	1.090	1.087	1.083	1.080	1.077	1.074	1.071	1.068	1.065	1.063	850-899
	900-949	1.100	1.096	1.092	1.088	1.084	1.081	1.078	1.075	1.072	1.069	1.066	900-949
	950-999	1.105	1.101	1.097	1.092	1.089	1.085	1.082	1.078	1.075	1.073	1.070	950-999
	1000-1049	1.111	1.106	1.102	1.097	1.093	1.089	1.085	1.082	1.079	1.076	1.073	1000-1049
	1050-1099	1.117	1.112	1.107	1.102	1.098	1.093	1.090	1.086	1.082	1.079	1.077	1050-1099
	1100-1149	1.122	1.117	1.111	1.106	1.102	1.097	1.093	1.089	1.086	1.083	1.080	1100-1149
	1150-1199	1.127	1.122	1.116	1.110	1.106	1.101	1.097	1.093	1.089	1.086	1.083	1150-1199
	1200-1249	1.133	1.127	1.121	1.115	1.110	1.105	1.100	1.096	1.092	1.089	1.086	1200-1249
	1250-1299	1.139	1.132	1.125	1.119	1.113	1.108	1.104	1.100	1.096	1.092	1.089	1250-1299
	1300-1349	1.144	1.136	1.129	1.123	1.117	1.112	1.107	1.103	1.099	1.095	1.092	1300-1349
	1350-1399	1.149	1.141	1.134	1.127	1.121	1.115	1.110	1.106	1.102	1.098	1.094	1350-1399
	1400-1449	1.154	1.146	1.138	1.131	1.125	1.119	1.114	1.109	1.105	1.101	1.097	1400-1449
	1450-1499	1.159	1.150	1.142	1.135	1.128	1.122	1.117	1.113	1.108	1.104	1.100	1450-1499



3.3 (J) Boyle's Law Deviation Multipliers for orifice meters (Continued)

Average Pressure PSIG	Average Temperature - °F																Average Pressure PSIG
	95-99	100-104	105-109	110-114	115-119	120-124	125-129	130-134	135-139	140-144	145-149	150-154	155-159	160-164	165-169	170-174	
0-49	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	1.002	0-49
50-99	1.006	1.006	1.006	1.006	1.005	1.005	1.005	1.005	1.005	1.005	1.005	1.005	1.005	1.005	1.005	1.005	50-99
100-149	1.010	1.009	1.009	1.009	1.008	1.008	1.008	1.008	1.008	1.007	1.007	1.007	1.007	1.007	1.007	1.007	100-149
150-199	1.013	1.013	1.012	1.012	1.011	1.011	1.011	1.010	1.010	1.010	1.009	1.009	1.009	1.010	1.009	1.009	150-199
200-249	1.017	1.016	1.015	1.015	1.014	1.014	1.013	1.013	1.012	1.012	1.011	1.011	1.011	1.012	1.011	1.011	200-249
250-299	1.020	1.019	1.019	1.018	1.017	1.016	1.016	1.015	1.015	1.015	1.014	1.014	1.014	1.015	1.014	1.014	250-299
300-349	1.024	1.023	1.022	1.021	1.020	1.020	1.019	1.018	1.017	1.017	1.016	1.016	1.016	1.017	1.016	1.016	300-349
350-399	1.027	1.026	1.025	1.024	1.023	1.022	1.021	1.021	1.020	1.019	1.019	1.019	1.019	1.019	1.019	1.019	350-399
400-449	1.031	1.030	1.029	1.028	1.027	1.026	1.025	1.024	1.023	1.022	1.021	1.021	1.021	1.022	1.021	1.021	400-449
450-499	1.034	1.033	1.031	1.030	1.029	1.028	1.027	1.027	1.026	1.025	1.024	1.024	1.024	1.025	1.024	1.024	450-499
500-549	1.037	1.036	1.035	1.033	1.032	1.031	1.030	1.029	1.028	1.027	1.026	1.026	1.026	1.027	1.026	1.026	500-549
550-599	1.040	1.039	1.038	1.036	1.035	1.033	1.032	1.031	1.030	1.029	1.028	1.028	1.028	1.029	1.028	1.028	550-599
600-649	1.044	1.042	1.041	1.039	1.038	1.036	1.035	1.034	1.033	1.031	1.030	1.029	1.029	1.031	1.030	1.030	600-649
650-699	1.048	1.046	1.044	1.043	1.041	1.040	1.038	1.036	1.035	1.034	1.033	1.032	1.031	1.034	1.033	1.033	650-699
700-749	1.051	1.049	1.047	1.045	1.044	1.042	1.041	1.039	1.038	1.036	1.035	1.034	1.033	1.036	1.035	1.035	700-749
750-799	1.054	1.052	1.050	1.049	1.047	1.045	1.043	1.041	1.040	1.039	1.037	1.036	1.035	1.039	1.037	1.037	750-799
800-849	1.058	1.056	1.054	1.052	1.050	1.048	1.046	1.044	1.043	1.041	1.040	1.039	1.038	1.041	1.040	1.040	800-849
850-899	1.061	1.059	1.057	1.055	1.053	1.051	1.049	1.047	1.045	1.044	1.042	1.041	1.040	1.044	1.042	1.042	850-899
900-949	1.064	1.062	1.060	1.058	1.055	1.053	1.051	1.049	1.047	1.046	1.044	1.043	1.042	1.046	1.044	1.044	900-949
950-999	1.067	1.065	1.063	1.061	1.058	1.056	1.054	1.052	1.050	1.048	1.046	1.045	1.044	1.048	1.046	1.046	950-999
1000-1049	1.071	1.068	1.065	1.063	1.061	1.059	1.056	1.054	1.052	1.050	1.048	1.047	1.046	1.050	1.048	1.048	1000-1049
1050-1099	1.074	1.071	1.069	1.067	1.064	1.062	1.059	1.057	1.055	1.053	1.051	1.050	1.049	1.053	1.051	1.051	1050-1099
1100-1149	1.077	1.074	1.072	1.069	1.067	1.064	1.062	1.059	1.057	1.055	1.053	1.052	1.051	1.055	1.053	1.053	1100-1149
1150-1199	1.080	1.077	1.074	1.072	1.069	1.066	1.064	1.062	1.059	1.057	1.055	1.054	1.053	1.057	1.055	1.055	1150-1199
1200-1249	1.083	1.079	1.077	1.074	1.071	1.068	1.066	1.064	1.061	1.059	1.057	1.056	1.055	1.059	1.056	1.056	1200-1249
1250-1299	1.085	1.082	1.080	1.077	1.074	1.071	1.068	1.066	1.063	1.061	1.058	1.056	1.055	1.061	1.058	1.058	1250-1299
1300-1349	1.089	1.085	1.082	1.079	1.076	1.073	1.071	1.068	1.065	1.062	1.060	1.057	1.055	1.062	1.060	1.060	1300-1349
1350-1399	1.091	1.088	1.085	1.082	1.079	1.076	1.073	1.070	1.067	1.064	1.062	1.059	1.057	1.064	1.062	1.062	1350-1399
1400-1449	1.094	1.090	1.087	1.084	1.081	1.078	1.075	1.072	1.069	1.066	1.064	1.061	1.059	1.066	1.064	1.064	1400-1449
1450-1499	1.096	1.093	1.089	1.086	1.083	1.080	1.077	1.073	1.070	1.068	1.065	1.062	1.059	1.066	1.064	1.065	1450-1499

**GENERAL TERMS AND CONDITIONS**  
 (Continued)

**3. MEASUREMENT (Continued)**

**Determination of Quantity (Continued)**

**3.4 Orifice Meters for "PL" and "T" Rate Schedules - Computations of volumes measured under "PL" and "T" Rate Schedules shall be in accordance with the following Subsections (a) through (h):**

- (a) The hourly orifice coefficient for each meter shall be calculated at the above base pressure and base temperature, at a flowing temperature of sixty (60) degrees Fahrenheit and for a gas of six hundred thousandths (.600) specific gravity.
- (b) The temperature of the gas shall be determined by means of a recording thermometer of standard manufacture acceptable to both parties and so installed that it may properly record the temperature of the gas flowing through the meter or meters, and the average of the twenty-four (24) hour record from the recording thermometer shall be deemed to be the gas temperature for that day, and the orifice coefficient as calculated in (a) above shall be corrected daily for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.
- (c) The specific gravity of the gas shall be determined by a recording gravitometer of standard manufacture acceptable to both parties and so installed by Seller that the specific gravity of the gas will be properly determined; or, if Seller does not consider it necessary to install a recording gravitometer at the point where tests are to be made, spot tests shall be made with an Edwards type gas balance, or by such other method as shall be agreed upon between the parties.

If the recording gravitometer is used, the average of the twenty-four (24) hour record for the recording instrument shall be deemed to be the specific gravity of the gas for that day and the orifice coefficient as calculated in (a) above shall be corrected daily for each one-thousandth (.001) variation from six hundred thousandths (.600). If the spot test method is used, the specific



GENERAL TERMS AND CONDITIONS  
 (Continued)

3 MEASUREMENT (Continued)

Determination of Quantity (Continued)

3.4 Orifice Meters for "PL" and "T" Rate Schedules (Continued)

gravity of the natural gas delivered hereunder shall be determined once monthly on a day as near the first of the month as is practicable, or as much oftener as is found necessary in practice. The result obtained from the test made on or near the first of the month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in (a) above shall be corrected accordingly for each one-thousandth (.001) variation from six hundred thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

- (d) Exact measurements of inside diameters of pipe runs and orifices shall be obtained by means of a micrometer to the nearest one-thousandth (.001) inch, which measurements shall be used in computations of coefficients.
- (e) Pressure taps for meter installations shall be taken from pipe runs two and one-half (2-1/2) inside pipe diameters upstream and eight (8) inside pipe diameters downstream from the orifice.
- (f) All orifice meter computations required in this Section shall be made in accordance with formulas and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the hourly orifice coefficient, the calculation of "X" shall be carried to six (6) decimals and "C" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 of Metric Metal Works Bulletin E-2 (Revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures, unless the first digit is "1", in which case five (5) significant figures shall be used.

GENERAL TERMS AND CONDITIONS  
(Continued)

3. MEASUREMENT (Continued)

Determination of Quantity (Continued)

3.4 Orifice Meters for "PL" and "T" Rate Schedules (Continued)

- (g) In determining the volume of gas delivered through the orifice during a daily period, either the observation method or the orifice chart integrator shall be used in reading the meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the hourly orifice coefficient, corrected in accordance with paragraphs (b) and (c) above, to obtain the gas volume for that chart.
- (h) The volumes of gas as determined in Subsections (a) through (g) above shall be adjusted to give effect to the deviation of such gas from Boyle's law in the same manner as set forth in Section 3.3 (h) and (j) above.

3.5 Positive Meters - When positive meters are used for the measurement of gas, the flowing temperature of the gas delivered shall be assumed to be sixty (60) degrees Fahrenheit, and no correction shall be made for any variation therefrom; provided, however, that Seller shall have the option of installing a recording thermometer and if Seller exercises such option and installs such thermometer, correction shall be made for each degree variation in the average flowing temperature for each positive meter chart.

When the average delivery pressure on the positive meter chart is 100 pounds per square inch gauge or more, the volumes of gas determined shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

- (a) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration.
- (b) The average temperature for the period under consideration will be determined as provided above.
- (c) When the flowing temperature of the delivered is assumed to be sixty (60) degrees Fahrenheit, there shall be selected from the table of positive meter multipliers, shown in



GENERAL TERMS AND CONDITIONS  
(Continued)

3. MEASUREMENT (Continued)

Determination of Quantity (Continued)

3.5 Positive Meters (Continued)

Section 3.5 (e) hereof, the multiplier corresponding to the average pressure as determined in (a) above; and, when the flowing temperature of the gas delivered be recorded as provided above, the multiplier shall be obtained by squaring the appropriate multiplier selected from the table of Section 3.3 (j) above.

(d) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas hereinabove determined by the multiplier selected in (c) above.

(e) Boyle's law Deviation Multipliers for Positive Meters:

Average Pressure PSIG	Assumed Temperature 60° F.
100-149	1.025
150-199	1.033
200-249	1.042
250-299	1.051
300-349	1.061
350-399	1.070
400-449	1.079
450-499	1.088

If at any time the composition of the gas delivered hereunder shall have materially changed so that the multipliers set out in Sections 3.3 (j) and 3.5 (e) hereof are no longer reasonable, Seller shall substitute reasonable multipliers.

3.6 Determination of Heat Content - The total heating value of the gas delivered hereunder shall be determined by Seller, using a Thomas or other standard type calorimeter, either by

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**3. MEASUREMENT (Continued)**

Determination of Quantity (Continued)

**3.6 Determination of Heat Content (Continued)**

taking a spot sample or by using a record from a recording calorimeter. The spot sample shall be taken as often as is found necessary in practice or the recording calorimeter shall be located at a suitable point on Seller's line so that the heating value of the gas delivered may be obtained. The moisture content of the gas delivered hereunder shall be determined at a suitable point by Seller as often as is found necessary in practice.

**4. MEASUREMENT EQUIPMENT**

**4.1 Ownership and Operation** - Except as otherwise provided in this paragraph and in Section 4.5 hereof, and except for deliveries where readings from Buyer's meter(s) are used for billing purposes, Seller shall furnish, install, operate and maintain, at its own expense at the point(s) of delivery, the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Section 3 hereof, the gas to be delivered hereunder. Seller shall likewise furnish, install, operate and maintain, at its own expense, such instruments and equipment as may be necessary at points other than the point(s) of delivery hereunder to obtain the information to measure properly, in accordance with Section 3 hereof, the gas to be delivered hereunder. Where Buyer provides such measuring equipment and Seller does not have such equipment installed, Seller shall have the right, for as long as it elects, not to install such meters, instruments and equipment so provided by Buyer, in which event and until Seller installs such measuring equipment, measurement of the gas shall be by Buyer's measuring equipment only. The metering and other equipment installed, together with any buildings erected by it for such equipment, shall be and remain the property of the installing party.

Whenever facilities of either party, required for or incidental to proper performance under the Service Agreement are located on premises of the other, then to the extent that it

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4. MEASUREMENT EQUIPMENT (Continued)

4.1 Ownership and Operation (Continued)

may have the right to do so, such party grants to the owner of said facilities the right of free ingress and egress to such premises at all times for the purposes of installation, operation, repair or removal of such facilities.

Either party shall have access to the metering equipment of the other at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts (except where otherwise mutually agreed upon) shall be done only by the employees or agents of the owner thereof. Charts and records from such metering equipment shall remain the property of the owner thereof. Upon request of the other party, the requested party will submit its records and charts from its metering equipment, together with calculations therefrom, for the requesting party's inspection and verification, subject to return within ten (10) days after receipt thereof, after which return they shall be kept on file by the owner thereof for the mutual use of both parties for a period of one (1) year.

4.2 Buyer's Meters - Buyer may, at its option and expense, install and operate meters, instruments and equipment of standard type at or near any point of delivery either to check Seller's meters, instruments and equipment, or to measure the gas delivered to Buyer where Seller has not installed a meter, but the measurement of gas delivered hereunder shall be by Seller's meters only, except in cases herein provided to the contrary. The meters, instruments and equipment installed by Buyer shall be subject at all reasonable times to inspection or examination by Seller, but the reading, calibration and adjustment thereof and changing of charts (except where otherwise mutually agreed upon) shall be done only by Buyer.

4.3 Notice of Meter Tests - Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the test so that the other party may conveniently have its representative present; provided, however, that if either party has given such notice to the other party and the other party is not present at the time

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4. MEASUREMENT EQUIPMENT (Continued)

4.3 Notice of Meter Tests (Continued)

specified, then the party giving the notice may proceed with the test as though the other party were present.

At least once each 30 days, on a day as near the first of each month as practical, each party shall calibrate its orifice meters and appurtenant instruments, and at least once each 90 days, on a day as near the first of the month as practical, each party shall calibrate its positive displacement meters, all in the presence of representatives of the other, as hereinabove provided in this Section, and the parties shall jointly observe any adjustment made.

4.4 Correction for Errors of Meters - If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If for any reason, meters are out of service or out of repair, so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereof upon the basis of the best data available, using the first of the following methods which is feasible:

- (a) By using the registration of any check meter or meters if installed and accurately registering.
- (b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.
- (c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meters were registering accurately.

4.5 Farm Taps and Rural Consumers - Where provision is made in any Service Agreement for sale of gas for resale to rural consumers through farm taps or rural service lines, Buyer

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4. MEASUREMENT EQUIPMENT (Continued)

4.5 Farm Taps and Rural Consumers (Continued)

shall install, operate and maintain at its own cost and expense the high pressure regulators, meters, low pressure regulators and such other equipment as may be necessary to measure gas and enable Buyer to receive such gas at the varying pressures in Seller's lines at the point or points of delivery; provided, however, that Seller shall always have the right to install meters and meter stations if it so desires at all or any such delivery points.

5. BILLING

5.1 Statements by Buyer - On or before the fifth day of each calendar month Buyer shall render to Seller at such office as Seller may designate, a statement showing for the preceding billing month the following volumes (tabulated separately by Billing Area Units where applicable), Sections (a), (b) and (c) not being applicable to "PL" and "T" Rate Schedules:

- (a) For all rural consumers served through farm taps where the meter is at or near the point of delivery by Seller: The volume of gas billed to such consumers.
- (b) For all rural consumers served through farm taps where the meter is not near the point of delivery by Seller, and for communities where neither Seller nor Buyer maintains a town border meter: (i) The total volume of gas billed to such consumer by Buyer, and (ii) An amount equivalent to five per cent (5%) of such total volume to cover lost and unaccounted-for gas.
- (c) For industrial or other customers of Buyer where the volumes delivered by Buyer to its customers are required by Seller for its billings to Buyer: The volumes so delivered, aggregate or separate as required by Seller in accordance with the applicable Rate Schedules, with a statement of respective daily volumes delivered by Buyer to Large Volume Industrial Use Only customers, all such volumes to be shown on the basis of measurement provided in Section 1.3 hereof.

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5. BILLING (Continued)

5.1 Statements by Buyer (Continued)

(d) For all deliveries of gas where the gas is measured by Buyer's measuring equipment, as provided in Section 4, and Buyer changes and reads the charts: The volume of gas delivered at each point of delivery.

5.2 Billing by Seller - On or before the tenth day of each calendar month Seller shall render to Buyer, at such office as Buyer may designate, statements showing the calculation of the monthly bill for gas delivered hereunder by Seller to Buyer during the preceding billing month.

6. PAYMENTS

6.1 Payment Date - On or before the twentieth day of each calendar month Buyer shall make payments to Seller, at such office as Seller may designate, amounts due Seller as shown by statements furnished Buyer in accordance with the foregoing Section 5.2.

6.2 Late Payment - In the event Buyer shall fail to pay any amount due Seller hereunder when the same is due, then interest thereon shall accrue at the rate of six per cent (6%) per annum from date when such amount is due until the same is paid. If such failure to pay continues for 60 days, Seller may, upon receipt of appropriate governmental authority, suspend deliveries of gas hereunder, and the exercise of such right shall be in addition to any and all other remedies available to Seller.

6.3 Error in Bills - In the event an error is discovered in the amount billed in any statement rendered by Seller, such error shall be adjusted promptly, provided that claim therefor shall have been made within 12 months from the date of payment.

6.4 Late Billing - If presentation of a bill to Buyer is delayed after the tenth day of the month, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay.



GENERAL TERMS AND CONDITIONS  
(Continued)

7. ACCESS TO BILLING DATA

Buyer and Seller shall have the right to examine the books, records, and charts of the other party at all reasonable times to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any section hereof.

8. DELIVERY PRESSURE(S), DELIVERY POINT(S) AND HOURLY DELIVERIES

Within any limits as to maximum or minimum pressure(s) specified in the Service Agreement, the gas shall be delivered hereunder at such pressure(s) as may be necessary to meet Buyer's requirements and as Seller may have available, from time to time, at the point(s) of delivery designated or provided for in the Service Agreement.

Deliveries of gas to Buyer shall be in an nearly equal hourly quantities as is practical, except where Buyer's operations require tolerances therefrom as specified in the Service Agreement.

9. POSSESSION OF GAS

9.1 Sales Agreements - Under any Service Agreement covering any sale of gas Seller shall be in exclusive control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

9.2 Transportation Agreements - Under any Service Agreement covering transportation of gas Buyer shall be in exclusive control and possession of the gas to be transported hereunder and responsible for any damage caused thereby until the same shall have been delivered to Seller, after which delivery Seller shall be in exclusive control and possession thereof and responsible for any injury or damage caused thereby until redelivered to Buyer after which redelivery Buyer shall be in exclusive control and possession of such gas and responsible for any injury or damage caused thereby.

GENERAL TERMS AND CONDITIONS  
(Continued)

10. WARRANTY

Seller warrants generally the title to all gas delivered hereunder, and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties or charges thereon.

11. FORCE MAJEURE

11.1 Definition of "Force Majeure" - The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a), in those instances where either Seller or Buyer is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses and (b), in those instances where either Seller or Buyer is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.



**GENERAL TERMS AND CONDITIONS**  
 (Continued)

**11. FORCE MAJEURE (Continued)**

11.2 Limitations on Obligations - In the event of either Buyer or Seller being rendered unable wholly or in part by force majeure to carry out its obligations under the Service Agreement, other than to make payments due thereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

11.3 Strikes and Lockouts - The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

**12. IMPAIRMENT OF DELIVERIES**

12.1 Proration of Impaired Deliveries - Seller delivers gas to (a) gas utilities, and pipe line companies which deliver gas to gas utilities, for resale to domestic and industrial consumers, (b) steam electric power plants for use in generating electricity which is sold to domestic consumers, and (c) industrial consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all of its consumers, then, Seller, may, without liability to Buyer prorate its gas supply in the manner hereinafter set forth after first making allowance for all gas required by Seller for the operation of any of its facilities. The gas requirements of gas utilities, and pipe line companies delivering gas to gas utilities, which sell gas to domestic consumers (but only to the extent of gas required for resale to such domestic consumers) shall first be supplied by Seller. If Seller is unable to supply gas for

GENERAL TERMS AND CONDITIONS  
 (Continued)

12. IMPAIRMENT OF DELIVERIES (Continued)

12.1 Proration of Impaired Deliveries (Continued)

all the requirements of such gas utilities and pipe line companies delivering gas to gas utilities, for resale to domestic consumers, then gas for such requirements shall be supplied ratably. In the event Seller is able to supply gas for all the requirements of such gas utilities, and pipe line companies delivering gas to gas utilities, for resale to domestic consumers, then there shall next be supplied the gas requirements of steam electric power plants using gas for the generation of electricity which is sold to domestic consumers, whether such power plants purchase their requirements from Seller or from gas utilities or from pipe line companies, purchasing their requirements from Seller; and, if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. After the above requirements have been supplied, the remaining gas supply, if any, shall be prorated by Seller among its other customers, to the extent of gas sold by them to their other consumers. In the event of any shortage of gas as in this Section provided, Buyer shall discontinue service of gas to its consumers during the period of any such shortage to the extent which may be necessary consistent to the provisions hereof.

In certain instances Seller supplies less than the full requirements of certain of its customers, and there may be times when Seller supplies less than the full requirements of Buyer hereunder and it is the intent of this Section that any priority granted hereunder shall run only to that part of the requirements of each ultimate consumer as is being currently supplied by gas furnished by Seller, directly or indirectly.

12.2 Alteration and Repairs to Facilities - Seller may, without liability to Buyer, interrupt its service for the purpose of making necessary alterations and repairs to its pipe lines and other facilities, but only for such time as may be reasonable or unavoidable; and Seller shall give to Buyer, except in case of an emergency, reasonable notice of its intention so to do and shall endeavor to arrange such interruptions so as to inconvenience Buyer and the other customers of Seller



GENERAL TERMS AND CONDITIONS  
(Continued)

12. IMPAIRMENT OF DELIVERIES (Continued)

12.2 Alteration and Repairs to Facilities (Continued)

as little as possible. Seller shall give to Buyer reasonable notice before resuming service after the same has been interrupted and agrees that it will not resume service hereunder until after having given Buyer reasonable time after notice within which to have a representative present when gas is again turned into Buyer's lines.

13. SERVICE AGREEMENT

13.1 Form of Service Agreement - Buyer shall enter into a contract with Seller under Seller's applicable standard form of Service Agreement, provided, however, that a contract between Seller and Buyer which was in effect on July 1, 1952 or such other date on which this Tariff becomes effective shall remain in effect and shall be considered as an executed Service Agreement to the extent that its provisions are not superseded by or in conflict with the Rate Schedules and General Terms and Conditions of this Tariff.

13.2 Term of Agreement - The period of time to be covered by the executed Service Agreement shall be determined by agreement between Seller and Buyer but shall not exceed 25 years.

13.3 Modification - No modification of the terms and provisions of an executed Service Agreement (other than Exhibits as provided for therein) shall be made except by the execution of a new Service Agreement.

GENERAL TERMS AND CONDITIONS  
 (Continued)

13. SERVICE AGREEMENT (Continued)

13.4 Waiver of Defaults - No waiver by either party of any one or more defaults by the other in the performance of any provisions of the Service Agreement between Buyer and Seller shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.

14. DULY CONSTITUTED AUTHORITIES

This Tariff and any Service Agreement thereunder, is expressly made subject to all present or future valid rules, regulations or orders of any commission or regulatory body having jurisdiction.

15. NOTIFICATION OF CHANGE OF DAILY REQUIREMENTS

Buyer and Seller will notify each other from time to time as necessary of expected changes in the rates of daily delivery or takings of gas hereunder or in the pressures or other operating conditions and the reasons for such expected changes as soon as such reasons come to the knowledge of either Buyer or Seller to the end that the other may be prepared to meet or to take advantage of such expected changes when, as and if they occur.

16. MAXIMUM DAILY DELIVERY OBLIGATION

Upon execution of a standard form of Service Agreement as contained in this FPC Gas Tariff the maximum daily delivery of gas required shall be designated which shall constitute and limit Seller's daily obligation to deliver in accordance with the provisions of the executed Service Agreement. Such maximum daily delivery obligation may not be modified except by execution of a new Service Agreement.

17. DESCRIPTIVE HEADINGS

The descriptive headings of the provisions of this Gas Tariff are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.



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UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

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**GENERAL TERMS AND CONDITIONS**  
(Continued)

**10. LIMITATION OF SERVICE UNDER RATE SCHEDULES TO SALES FOR RESALE IN INTERSTATE COMMERCE**

The Rate Schedules in the Tariff are available only in connection with sales of natural gas for resale in interstate commerce subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, as amended, and are not available in connection with any other sales.

Issued By: A. D. Greene, Vice President

Issued On: **JULY 3, 1952**

Effective: **JULY 3, 1952**

**AUG. 3, 1952**

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SERVICE AGREEMENT - FORM A  
(Continued)

ARTICLE IV  
SALES TO RURAL CONSUMERS  
(Continued)

territory as any distribution system of Buyer supplied by Seller. Upon request therefor by Seller, Buyer will sell gas, purchased from Seller, to such rural consumers, for such purposes in accordance with Buyer's standard and applicable service policy, rate and contract, and all gas sold by Seller to Buyer for such purposes will be delivered to Buyer at the cut off valves at the termini of Seller's service taps, installed and operated above ground at Seller's cost and expense along and adjacent to its pipe line.

ARTICLE V  
PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule \_\_\_\_\_ or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

Issued By: A. D. Greene, Vice President  
Issued On: JULY 3, 1952

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(407)

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

Original Sheet No. 106

SERVICE AGREEMENT - FORM B  
(Continued)

ARTICLE IV  
PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule \_\_\_\_\_ or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

ARTICLE V  
TERM

This agreement shall become effective on \_\_\_\_\_ and shall continue and remain in force and effect for a period \_\_\_\_\_

ARTICLE VI  
MODIFICATION

No modification of the terms and provisions of this Service Agreement shall be or become effective except by the execution of a superseding Service Agreement.

Issued By: A. D. Greene, Vice President  
Issued On: ~~\_\_\_\_\_~~

Effective: July 1, ~~1962~~  
AUG. 3, 1962

~~JULY 3, 1962~~

★ ★ ★ ★ ★ ★

SERVICE AGREEMENT - FORM C  
(Continued)

ARTICLE III  
VOLUMETRIC OBLIGATIONS  
(Continued)

Should Buyer desire, at any time, any increase in deliveries from Seller, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the volumes deliverable shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the volumetric obligations shall remain unchanged.

ARTICLE IV  
PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule \_\_\_\_\_ or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

Issued By: A. D. Greene, Vice President

Issued On: [REDACTED]

Effective: [REDACTED]  
AUG. 3, 1952

JULY 3, 1952

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(417)

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
Original Volume No. 1

Original Sheet No. 116

SERVICE AGREEMENT - FORM D  
(Continued)

ARTICLE IV  
PRICE

All gas transported hereunder shall be paid for by Buyer under Seller's Rate Schedule \_\_\_\_\_ or any effective superseding rate schedule, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

ARTICLE V  
TERM OF AGREEMENT

This agreement shall become effective on \_\_\_\_\_ and shall continue and remain in force and effect for a period \_\_\_\_\_

Issued By: A. D. Greene, Vice President  
Issued On: \_\_\_\_\_

Effective: July 1, 1952  
AUG. 3, 1952

JULY 8, 1952



**UNITED GAS PIPE LINE COMPANY**  
**FPC Gas Tariff**  
**Original Volume No. 1**

Original Sheet No. 118

**INDEX OF PURCHASERS**

<u>Purchaser</u>	<u>Rate Schedules</u>	<u>Service Agreement</u>		
		<u>Date of Execution</u>	<u>Effective Date</u>	<u>Term</u>
Arkansas Louisiana Gas Company				
Belcher, Louisiana, Town of .....	G-4C	<del>5-25-42</del>	<del>6-19-42</del>	<del>Mo. to Mo.</del>
Bethany, Louisiana, Town of .....	G-4C	<del>5-25-42</del>	<del>6-19-42</del>	<del>Mo. to Mo.</del>
Southwestern Gas and Electric Co. (Lieberman Power Plant) .....	IND-4C	<del>5-10-29</del>	<del>7-25-47</del>	<del>Mo. to Mo.</del>
W. C. Woolf .....	G-4C	<del>5-10-29</del>	<del>5-47</del>	<del>Mo. to Mo.</del>
Atmore, Brewton and Flomaton, Alabama ..	G-2J	1-9-47	8-12-47	7-25-62
Bay Minette, Alabama, Town of .....	IND-5J	G-1J	1-10-42	7-22-42
Bay St. Louis, Mississippi, City of ...	G-2J	6-16-41	5-26-41	7-25-62
Benton, Louisiana, Village of .....	G-1C	9-8-48	9-26-48	7-25-62
Bridges, W.P., near Jackson, Miss. ....	G-1J	7-27-42	8-27-42	Mo. to Mo.
Canton, Mississippi, City of .....	DG-2J	1-20-43	1-27-43	7-25-62
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Fairhope, Alabama, City of .....	G-1J	1-23-50	9-29-50	7-25-62
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Kirkpatrick Utility Company, near Tyler, Texas .....	G-2C	7-15-48	10-22-48	Mo. to Mo.
Logan, W. B., near Lisbon, Louisiana ..	G-1C	5-26-38	5-28-38	Mo. to Mo.
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Mississippi River Fuel Corporation ....	PL3	8-1-29	11-21-29	11-1-66
Mississippi River Fuel Corporation ....	I4	3-1-48	3-26-48	Mo. to Mo.
Mississippi Valley Gas Company				
Alta Woods, Mississippi .....	G-3J	8-5-47	7-26-47	7-26-62
Bolton, Mississippi .....	G-3J	10-14-47	12-11-47	7-26-62
Edwards, Mississippi .....	G-3J	10-14-47	12-11-47	7-26-62
Jackson, Mississippi, and Environs ..	IND-1J) IND-2J)	DG-3J	8-5-47	7-26-47
Raymond, Mississippi .....	G-3J	8-5-47	7-26-47	7-26-62
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Texas Eastern Transmission Corp. ....	PL1	12-1-51	*	20 years
Texas Eastern Transmission Corp. ....	PL3	6-20-47	11-15-47	11-15-67

Issued By: A. D. Greene, Vice President  
 Issued On: **JULY 8, 1952**

Effective: **AUG. 3, 1952**



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(Continued)

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		Date of Execution	Effective Date	Term
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Texas Eastern Transmission Corp. ....	T2	1-15-48	12- 1-47	10-31-52
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Texas Eastern Transmission Corp. ....	X2	8- 5-48	11- 2-48	11- 1-55
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Charleston, Mississippi .....	DG-NW	11- 5-48	5- 1-49	5- 1-69
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Issued By: A. D. Greene, Vice President  
Issued On: [REDACTED]

**JULY 3, 1952**

Effective: **JULY 1, 1952**  
AUG. 3, 1952

INDEX OF PURCHASERS  
(Continued)

Purchaser	Rate Schedules	Service Agreement		
		Date of Execution	Effective Date	Term
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Rural Service and Farm Taps near Waskom, Texas .....	G-1C	7-24-37	7-25-37	7-25-62
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Wood, Hugh N. ....	G-B	12- 1-44	9-15-45	7-25-62

\* First delivery under contract.

Issued By: A. D. Greene, Vice President

Issued On: **JULY 8, 1962**

Effective: **AUG. 8, 1962**



**RATE SCHEDULE DG-NW  
 GENERAL SERVICE FOR LARGE VOLUME DISTRIBUTORS  
 NORTHWEST MISSISSIPPI RATE ZONE**

**1. AVAILABILITY**

This rate schedule is available to any natural gas distributor (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale in a Billing Area Unit located in Seller's Northwest Mississippi Rate Zone when Buyer has executed with Seller a Service Agreement for the purchase of natural gas for such Billing Area Unit.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale in such Billing Area Unit. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

46¢ per Mcf for all gas delivered during the billing month up to that number of Mcf obtained by multiplying the Billing Demand for the month by 8.

30¢ per Mcf for all gas delivered during the billing month in excess of the number of Mcf billed at 46¢ per Mcf.

**4. MINIMUM BILL**

The minimum bill to Buyer for any billing month for service in each Billing Area Unit under this rate schedule shall be \$1.00 per Mcf of the Billing Demand in effect for the billing month.

**5. BILLING DEMAND**

The Billing Demand for each Billing Area Unit shall be the maximum volume of gas taken under this rate schedule by Buyer for each such Billing Area Unit in any one day during the 12 months' period ending with the last day of the current billing month, but not less than 3,000 Mcf. The greatest day's delivery during any month at a point where gas is

Issued By: A. D. Greene, Vice President  
 Issued On: December 1, 1954

Effective: August 1, 1954

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**RATE SCHEDULE G-J**  
**GENERAL SERVICE FOR SMALL VOLUME DISTRIBUTORS (Optional)**  
**JACKSON RATE ZONE**

**1. AVAILABILITY**

This rate schedule is available to any natural gas distributor (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale in a Billing Area Unit:

- (a) having a maximum daily demand which is, or is estimated to be, 5,000 Mcf a day or less; and
- (b) located in Seller's Jackson Rate Zone

when Buyer has executed with Seller a Service Agreement for the purchase of natural gas for such Billing Area Unit.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale in such Billing Area Unit, except such natural gas as is purchased for resale for Large Volume Industrial Use Only under other rate schedules available to Buyer under this tariff. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

22.3¢ per Mcf for all gas delivered.

**4. MINIMUM BILL**

None.



Issued By: A. D. Greene, Vice President  
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Effective: November 1, 1955



(538)

UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
First Revised Volume No. 1



**SUPERSEDED**

First Revised Sheet No. 18  
Superseding Original Sheet No. 18

**RATE SCHEDULE IND-J  
LARGE VOLUME INDUSTRIAL USE ONLY  
JACKSON RATE ZONE**

**1. AVAILABILITY**

This rate schedule is available to any natural gas distributor (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale for large volume industrial use only to industrial consumers located in Seller's Jackson Rate Zone, where Buyer has executed with Seller a Service Agreement for service for such industrial consumers.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale for such large volume industrial use only. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions, and Section 7 of the rate schedule.

**3. RATE**

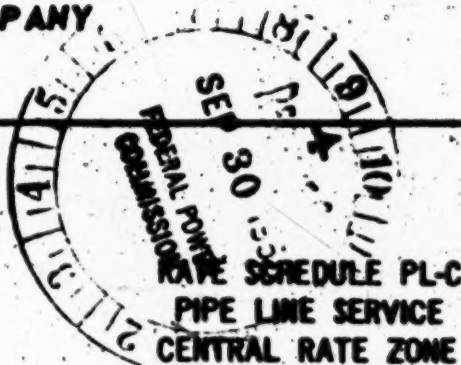
19.5¢ per Mcf for all gas delivered.

**4. MINIMUM ANNUAL BILL**

Commencing with the first January billing month following the initiation of service to a large volume industrial consumer, there shall be a minimum annual bill for service for each such large volume industrial consumer. The minimum annual bill applicable to service for a particular consumer shall be the product of \$0.95 times the number of Mcf delivered to the consumer in question during the month of maximum deliveries to such consumer during the 12 billing month period commencing with each January. Should the sum of the monthly bills for gas sold for resale to the consumer in question during the 12-month period be less than the minimum annual bill as determined herein for service for such consumer for such period, then the amount by which the minimum annual bill exceeds the sum of the monthly bills shall be due and payable with the twelfth month's bill for such period.

Issued By: A. D. Greene, Vice President  
Issued On: September 29, 1955

Effective: November 1, 1955

**1. AVAILABILITY**

This rate schedule is available to any natural gas pipeline company (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at delivery points located in Seller's Central Rate Zone, for resale after transmission through Buyer's transmission system, where Buyer has executed with Seller a Service Agreement.

**2. APPLICABILITY AND CHARACTER OF SERVICE**

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement for service under this rate schedule. Deliveries of gas hereunder up to the Maximum Daily Quantity shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

**3. RATE**

For natural gas service rendered to Buyer each month under this rate schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

- |                                    |                  |
|------------------------------------|------------------|
| (a) Demand Charge                  |                  |
| Per Mcf of Maximum Daily Quantity  |                  |
| in effect during the billing month | \$1.10 per month |
| (b) Commodity Charge               |                  |
| Per Mcf of natural gas delivered   | 10.5¢            |

**4. MINIMUM BILL**

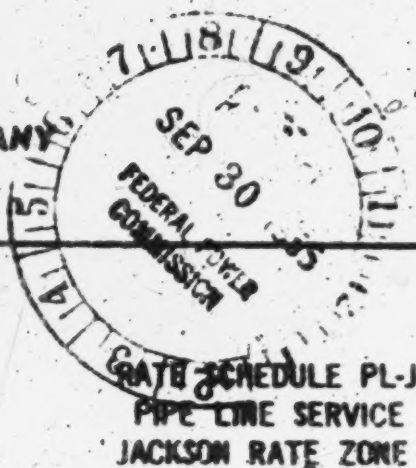
In computing the minimum bill under this rate schedule, the contract year shall be a period of 12 consecutive months beginning on the date specified on Sheet No. 99 of this First Revised Volume No. 1 as the Contract Year Anniversary.



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UNITED GAS PIPE LINE COMPANY  
FPC Gas Tariff  
First Revised Volume No. 1

First Revised Sheet No. 25  
Superseding Original Sheet No. 25



#### 1. AVAILABILITY.

This rate schedule is available to any natural gas pipeline company (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at delivery points located in Seller's Jackson Rate Zone, for resale after transmission through Buyer's transmission system, where Buyer has executed with Seller a Service Agreement.

#### 2. APPLICABILITY AND CHARACTER OF SERVICE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement executed for service under this rate schedule. Deliveries of gas hereunder, up to the Maximum Daily Quantity, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

#### 3. RATE

For natural gas service rendered to Buyer each month under this rate schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

- |                                    |                  |
|------------------------------------|------------------|
| (a) Demand Charge                  |                  |
| Per-Mcf of Maximum Daily Quantity  |                  |
| in effect during the billing month | \$1.56 per month |
| (b) Commodity Charge               |                  |
| Per Mcf of natural gas delivered   | 12.5¢            |

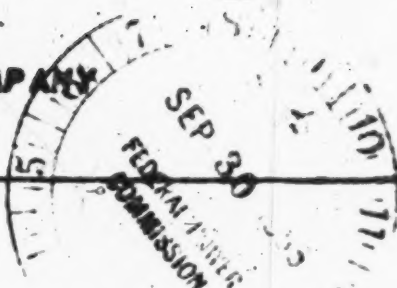
#### 4. MINIMUM BILL

In computing the minimum bill under this rate schedule, the contract year shall be a period of 12 consecutive months beginning on the date specified on Sheet No. 99 of this First Revised Volume No. 1 as the Contract Year Anniversary.

Issued By: A. D. Greene, Vice President  
Issued On: September 29, 1955

Effective: November 1, 1955





RATE SCHEDULE PL-MF  
MONROE FIELD SALE TO  
TEXAS GAS TRANSMISSION CORPORATION

1. AVAILABILITY

This rate schedule is available to Texas Gas Transmission Corporation (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas produced in and delivered to Buyer in the Monroe Field, Louisiana, for resale, under a Service Agreement between Seller and Buyer for such delivery.

2. APPLICABILITY AND CHARACTER OF SERVICE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer under such Service Agreement. Deliveries of gas hereunder up to the volume of gas Seller is obligated to deliver to Buyer under such Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

10.4¢ per Mcf of natural gas delivered.

4. MINIMUM MONTHLY BILL

None.

5. QUANTITIES

The quantities of gas which Seller is obligated to sell and deliver and Buyer is obligated to purchase and receive shall be the quantities as specified in the Service Agreement.

6. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

7. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

Issued By: A. D. Greene, Vice President  
Issued On: September 29, 1955

Effective: November 1, 1955





1314

Accepted for Filing to Become  
Effective May 1, 1955

## SERVICE AGREEMENT

(Large Volume Industrial Use Only Customers)

THIS AGREEMENT, made and entered into this 25th day of March, 1955, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller", and MISSISSIPPI VALLEY GAS COMPANY, a Mississippi corporation, hereinafter called "Buyer",

### WITNESSETH:

In consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

### ARTICLE I

#### SCOPE OF AGREEMENT

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas for resale for large volume industrial use only to the following customers of Buyer:

Buckeye Cotton Oil Company, Jackson, Mississippi  
Filtrol Corporation, Jackson, Mississippi  
Jackson Lamp Works, G. E. Co., Jackson, Mississippi  
Knox Glass Bottle Company, Jackson, Mississippi  
Mississippi Power & Light Company  
Rex Brown Power Plant, Jackson, Mississippi

## ARTICLE II

## DELIVERY POINT AND PRESSURE

Delivery of natural gas by Seller to Buyer for resale for each large volume industrial use only customer shall be made at the outlet of Seller's facilities at the points designated below; and such gas shall be delivered hereunder at such pressures as may be necessary to meet Buyer's requirements, from time to time, at said points of delivery, but not to exceed the pressures shown below:

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Name of Large Volume Industrial Use Only Customer	Delivery Point Location	Delivery Pressure
Buckeye Cotton Oil Company	Town Border #2	Not to exceed 100 p.s.i.g.
Filtrol Corporation	Filtrol—G. E. tap	Not to exceed 100 p.s.i.g.
Jackson Lamp Works, G. E. Co.	Filtrol—G. E. tap	Not to exceed 100 p.s.i.g.
Knox Glass Bottle Company	Knox tap	Not to exceed 100 p.s.i.g.
Mississippi Power & Light Company Rex Brown Power Plant	Town Border #4	Not to exceed 100 p.s.i.g.

Buyer agrees to take and receive gas hereunder at the pressure herein provided for and thereafter to regulate and control said gas to the extent necessary for its operations.

## ARTICLE III

## MAXIMUM DAILY QUANTITY

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to receive from Seller, in any one day, more than the volume of gas specified below for each large volume industrial use only customer of Buyer, which quantity is hereby designated as Seller's "Maximum Daily Quantity" applicable to such industrial customer:



Name of Large Volume Industrial Use Only Customer	Applicable Maximum Daily Quantity
Buckeye Cotton Oil Company	1,540 Mcf
Filtrol Corporation	2,150 Mcf
Jackson Lamp Works, G. E. Co.	960 Mcf
Knox Glass Bottle Company	2,900 Mcf
Mississippi Power & Light Company Rex Brown Power Plant	46,000 Mcf

### 1316

Should buyer desire, at any time any increase in maximum daily deliveries from Seller over and above the Maximum Daily Quantity of Seller specified above for any industrial customer, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the applicable Maximum Daily Quantity shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the Maximum Daily Quantity shall remain unchanged.

For each large industrial use only customer covered by this Service Agreement, where Seller supplies to Buyer

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less than the entire requirements of gas for such industrial customer, Buyer shall, as nearly as practicable, receive gas hereunder at the same hourly and daily load factor as that at which Buyer delivers to such industrial customer.

#### ARTICLE IV

##### PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule IND-J, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

#### ARTICLE V

##### TERM

This agreement shall become effective on May 1, 1955, at 7:00 a.m. and shall continue and remain in force and effect for a period ending August 1, 1962, at 7:00 a.m.

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#### ARTICLE VI

##### MODIFICATION

No modification of the terms and provisions of this Service Agreement shall be or become effective except by the execution of a superseding Service Agreement.

#### ARTICLE VII

##### SUBJECT HEADINGS

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.



ARTICLE VIII  
AGREEMENTS BEING SUPERSEDED

This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

Gas Sales Contract dated August 5, 1947, as amended.

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered thereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

ARTICLE IX  
CHANGE OF OWNERSHIP

If all or any part of Buyer's distribution system or systems into which the gas sold hereunder is received, are voluntarily sold or exchanged by Buyer, then and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such facilities to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement, and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

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If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will there-

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by be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement applicable to the property so sold or exchanged; and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

**ARTICLE X**

**SUCCESSORS AND ASSIGNS**

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate originals.

**UNITED GAS PIPE LINE COMPANY**

By A. D. GREENE  
*Vice President*

**ATTEST:**

B. H. WINHAM  
*Secretary*

**MISSISSIPPI VALLEY GAS COMPANY**  
(Buyer)

By TOM W. CROCKETT  
*Vice President*

**ATTEST:**

W. W. POINTER, JR.  
*Assistant Secretary*



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Accepted for Filing to Become  
Effective May 1, 1955**SERVICE AGREEMENT**

THIS AGREEMENT, made and entered into this 25th day of March, 1955, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller", and MISSISSIPPI VALLEY GAS COMPANY, a Mississippi corporation, hereinafter called "Buyer,"

**WITNESSETH:**

In consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

**ARTICLE I****SCOPE OF AGREEMENT**

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas as follows:

All of Buyer's requirements for resale and distribution through Buyer's several distribution systems serving Bolton, Edwards, and Raymond, all being communities in Hinds County, Mississippi, and their adjoining environs, and the gas necessary for Buyer to render domestic service to farm taps and rural service lines located along Seller's pipe lines in the same general territory as said communities.

**ARTICLE II****DELIVERY POINT, QUANTITY AND PRESSURE**

Delivery of natural gas by Seller to Buyer for each distribution system (not including farm taps and rural

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service lines) shall be made at the outlet of Seller's facilities at the points designated on Exhibit "A" attached to this Service Agreement, and at any additional point or points mutually agreed upon by the parties and added by revising Exhibit "A". The maximum quantity of gas

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deliverable by Seller to Buyer hereunder in any one day at any delivery point shall be the quantity specified for such delivery point in Exhibit "A", provided that the aggregate volume deliverable on any day at all such delivery points hereunder shall not exceed the Maximum Daily Quantity stated in Article III hereof.

Such gas shall be delivered hereunder at such pressure (not to exceed one hundred (100) pounds or such pressures as may be shown in Exhibit "A") as may be necessary to meet Buyer's requirements, from time to time, at said points of delivery.

Buyer agrees to take and receive gas hereunder at the pressure herein provided for and thereafter to regulate and control said gas to the extent necessary for its operations.

### ARTICLE III

#### MAXIMUM DAILY QUANTITY

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to receive from Seller, in any one day, more than an aggregate of 1,210,000 cubic feet of gas, which quantity is hereby designated as Seller's "Maximum Daily Quantity."

Should Buyer desire, at any time any increase in maximum daily deliveries from Seller over and above the Maximum Daily Quantity of Seller, it may notify Seller



in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the Maximum Daily Quantity hereunder shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the Maximum Daily Quantity shall remain unchanged.

### 1321

For each Billing Area Unit covered by this Service Agreement, where Seller supplies to Buyer less than the entire requirements of gas for Buyer's distribution system or facilities served under this Service Agreement, Buyer shall, as nearly as practicable, receive gas hereunder at the same hourly and daily load factor as that at which Buyer receives its entire requirements of gas for such distribution system or facilities.

## ARTICLE IV

### SALES TO RURAL CONSUMERS

Where provision is made in Article I hereof for sale of gas for the purpose of this Article IV, Seller will deliver

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gas in addition to the quantities specified in Articles II and III to Buyer in accordance with Section 4.5 of the General Terms and Conditions of Seller's Tariff for resale by Buyer for domestic purposes to rural consumers through farm taps and rural service lines along and in the vicinity of Seller's pipe lines adjacent to and in the same general territory as any distribution system of Buyer supplied by Seller. Upon request therefor by Seller, Buyer will sell gas, purchased from Seller, to such rural consumers, for such purposes in accordance with Buyer's standard and applicable service policy, rate and contract, and all gas sold by Seller to Buyer for such purposes will be delivered to Buyer at the cut off valves at the termini of Seller's service taps, installed and operated above ground at Seller's cost and expense along and adjacent to its pipe line.

#### **ARTICLE V**

##### **PRICE**

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule G-J, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

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#### **ARTICLE VI**

##### **TERM**

This agreement shall become effective on May 1, 1955, at 7:00 a.m. and shall continue and remain in force and effect for a period ending January 1, 1975, at 7:00 a.m.



**ARTICLE VII****MODIFICATION**

No modification of the terms and provisions of this Service Agreement, other than in Exhibit "A" as herein provided for, shall be or become effective except by the execution of a superseding Service Agreement.

**ARTICLE VIII****SUBJECT HEADINGS**

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.

**ARTICLE IX****AGREEMENTS BEING SUPERSEDED**

This agreement supersedes, cancels and terminates, as of the effective date of the terms of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

Gas Sales Contract dated August 5, 1947, as amended.

**1323**

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered hereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

## ARTICLE X

## CHANGE OF OWNERSHIP

If all or any part of Buyer's distribution system or systems into which the gas sold hereunder is received, are voluntarily sold or exchanged by Buyer, then and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such facilities to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement, and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will thereby be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event, Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement applicable to the property so sold or exchanged, and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

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## ARTICLE XI

## SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.



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IN WITNESS WHEREOF, the parties hereto have executed  
this agreement in duplicate originals.

UNITED GAS PIPE LINE COMPANY

By A. D. GREENE  
Vice President

ATTEST:

B. H. WINHAM  
Secretary

MISSISSIPPI VALLEY GAS COMPANY  
(Buyer)

By TOM W. CROCKETT  
Vice President

ATTEST:

W. W. POINTER, JR.  
Assistant Secretary

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**EXHIBIT A**

**Effective May 1, 1955 to Service Agreement  
dated March 25, 1955**

**(Supersedes Exhibit "A" effective on )**

<b>Delivery Point Location</b>	<b>Maximum Daily Quantity</b>	<b>Delivery Pressure</b>
<b>A. At the respective metering and regulating stations located near the following communities:</b>		
1. Bolton, Mississippi	160 Mcf	Not to exceed 100 p.s.i.g.
2. Edwards, Mississippi	250 Mcf	Not to exceed 100 p.s.i.g.
3. Raymond, Mississippi	600 Mcf	Not to exceed 100 p.s.i.g.
<b>B. At the point of connection between Seller's facilities and Buyer's line serving U. S. Waterways Experiment Station, near Vicksburg, Mississippi</b>		
	200 Mcf	Not to exceed 100 p.s.i.g.

**UNITED GAS PIPE LINE COMPANY**

**By A. D. GREENE  
Vice President**

**MISSISSIPPI VALLEY GAS COMPANY  
(Buyer)**

**By TOM W. CROCKETT  
Vice President**

**1326**

**Accepted for Filing to Become  
Effective: May 1, 1955**

**SERVICE AGREEMENT**

**This Agreement, made and entered into this 25th day of  
March, 1955, by and between United Gas Pipe Line Com  
pany, a Delaware Corporation, hereinafter called "Seller,"**



and Mississippi Valley Gas Company, a Mississippi corporation, hereinafter called "Buyer,"

### WITNESSETH:

In consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

## ARTICLE I

### SCOPE OF AGREEMENT

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas as follows:

All of Buyer's requirements for general service resale and distribution through Buyer's distribution systems serving Jackson, in Hinds County, Mississippi, and the surrounding general territory and the gas required for resale by Buyer to certain of its customers being served from taps on Seller's facilities; and the gas necessary for Buyer to render domestic service to farm taps and rural service lines located along Seller's pipe lines described as follows:

(a) Seller's Sterlington-Jackson 18" line from valve located at Mile Post 106 + 4989.6'—East of Raymond to Seller's Jackson Compressor Station, and

(b) Seller's Benton-Mobile line from said Jackson Compressor Station to a point on the boundary line of Madison and Hinds Counties, Mississippi, and

(c) Seller's McComb 6" line from said Jackson Compressor Station to the intersection of said line with Trahon Creek in Section 12, Township 4 North, Range 1 West, Hinds County, Mississippi, and

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(d) That portion of Seller's 6" Canton line located in Hinds County, Mississippi, and

(e) All lateral lines of Seller extending from said main pipe lines of Seller as described in (a), (b), (c) and (d) above.

## **ARTICLE II**

### **DELIVERY POINT, QUANTITY AND PRESSURE**

Delivery of natural gas by Seller to Buyer for each distribution system (not including farm taps and rural service lines) shall be made at the outlet of Seller's facilities at the points designated on Exhibit "A" attached to this Service Agreement, and at any additional point or points mutually agreed upon by the parties and added by revising Exhibit "A". The maximum quantity of gas

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deliverable by Seller to Buyer hereunder in any one day at any delivery point shall be the quantity specified for such delivery point in Exhibit "A", provided that the aggregate volume deliverable on any day at all such delivery points hereunder shall not exceed the Maximum Daily Quantity stated in Article III hereof.

Such gas shall be delivered hereunder at such pressure (not to exceed one hundred (100) pounds or such pressures as may be shown in Exhibit "A") as may be necessary to meet Buyer's requirements, from time to time, at said points of delivery.

Buyer agrees to take and receive gas hereunder at the pressure herein provided for and thereafter to regulate and control said gas to the extent necessary for its operations



### ARTICLE III

#### MAXIMUM DAILY QUANTITY

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to receive from Seller, in any one day, more than an aggregate of 67,440,000 cubic feet of gas, which quantity is hereby designated as Seller's "Maximum Daily Quantity."

Should Buyer desire, at any time any increase in maximum daily deliveries from Seller over and above the Maximum Daily Quantity of Seller, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the Maximum Daily Quantity hereunder shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the Maximum Daily Quantity shall remain unchanged.

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For each Billing Area Unit covered by this Service Agreement, where Seller supplies to Buyer less than the

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entire requirements of gas for Buyer's distribution system or facilities served under this Service Agreement, Buyer shall, as nearly as practicable, receive gas hereunder at the same hourly and daily load factor as that at which Buyer receives its entire requirements of gas for such distribution system or facilities.

## ARTICLE IV

### SALES TO RURAL CONSUMERS

Where provision is made in Article I hereof for sale of gas for the purpose of this Article IV, Seller will deliver gas in addition to the quantities specified in Articles II and III to Buyer in accordance with Section 4.5 of the General Terms and Conditions of Seller's Tariff for resale to Buyer for domestic purposes to rural consumers through farm taps and rural service lines along and in the vicinity of Seller's pipe lines adjacent to and in the same general territory as any distribution system of Buyer supplied by Seller. Upon request therefor by Seller, Buyer will sell gas, purchased from Seller, to such rural consumers, for such purposes in accordance with Buyer's standard and applicable service policy, rate and contract, and all gas sold by Seller to Buyer for such purposes will be delivered to Buyer at the cut off valves at the termini of Seller service taps, installed and operated above ground at Seller cost and expense along and adjacent to its pipe line.

## ARTICLE V

### PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule DG-J, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and



to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

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### ARTICLE VI

#### TERM

This agreement shall become effective on May 1, 1955, at 7:00 a.m. and shall continue and remain in force and effect for a period ending January 1, 1975, at 7:00 a.m.

### ARTICLE VII

#### MODIFICATION

No modification of the terms and provisions of this Service Agreement, other than in Exhibit "A" as herein provided for, shall be or become effective except by the execution of a superseding Service Agreement.

### ARTICLE VIII

#### SUBJECT HEADINGS

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.

### ARTICLE IX

#### AGREEMENTS BEING SUPERSEDED

This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

Gas Sales Contract dated August 5, 1947, as amended.

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered hereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

## ARTICLE X

### CHANGE OF OWNERSHIP

If all or any part of Buyer's distribution system or systems, into which the gas sold hereunder is received, are voluntarily sold or exchanged by Buyer, then, and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such facilities to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement; and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will thereby be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event, Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement applicable to the property so sold or exchanged, and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.



(1332)

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## ARTICLE XI

### SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

In Witness Whereof, the parties hereto have executed this agreement in duplicate originals.

UNITED GAS PIPE LINE  
COMPANY

OK AJ

By A. D. GREENE  
*Vice President*

Attest:

B. H. WINHAM  
*Secretary*

MISSISSIPPI VALLEY GAS  
COMPANY (Buyer)

By (Illegible)  
*Vice President*

Attest:

W. W. POINTER, JR.  
*Assistant Secretary*

1332

## EXHIBIT A

Effective May 1, 1955 to Service Agreement dated  
March 25, 1955

(Supersedes Exhibit "A" effective on \_\_\_\_\_)

(1332)

Delivery Point Location	Maximum Daily Quantity	Delivery Pressure
A. At the existing points of connection between Seller's facilities and Buyer's facilities, such points being generally known as and located as follows:		
1. Town Border #1; located at the corner of High Street and Greymont Avenue, in Block G of the Fairgrounds Addition, in the City of Jackson, Hinds County, Mississippi	20,000 Mcf	Not to Exceed 100 p.s.i.g.
2. Town Border # 2; located at the corner of Woodrow Wilson Avenue and Holmes Avenue, in Block D of Willow Brook Place subdivision, in the City of Jackson, Hinds County, Mississippi	9,500 Mcf	"
3. Town Border # 3; located at approximately Station 53 + 78 on Seller's 8" Woodrow Wilson meter station transmission line	5,500 Mcf	"
4. Town Border # 4; located at approximately Station 185 + 35 on Seller's 12" transmission line to Mississippi Power & Light Company's Rex Brown Power Plant, such point being near Livingston Road near the City Limits of the City of Jackson, Hinds County, Mississippi	15,000 Mcf	"
1333		
5. Town Border # 5; located in Sec. 20, Township 5 North, Range 1 East, near the community of Alta Woods, a suburb of the City of Jackson, Hinds County, Mississippi	4,500 Mcf	"
B. At the following taps on Seller's line at which deliveries of gas are being made for resale by Buyer to the customers indicated below for other than Domestic use:		



1. Armstrong Cork Company; tap located at approximately Station 6148 + 43 on Seller's Sterlington-Jackson line 140 Mef "
2. Cataphote Manufacturing Company; tap located at approximately Station 97 + 80 on Seller's Jackson Field South 10" line (now known as Jackson-Magnolia Main Line) 500 Mef "
3. Century Manufacturing Company; tap located at approximately Station 30 + 31 on Seller's 12" transmission line to Jackson Town Border Station # 4 650 Mef "

## 1334

4. Gulf States Creosoting Company; tap located at approximately Station 68 + 11 on Seller's Jackson-Magnolia line, or alternately, at the end of Seller's 4" line "M" at approximately Station 68 + 66 on Seller's said Jackson-Magnolia line 350 Mef "
5. Great Southern Box Company; tap located at approximately Station 68 + 11 on Seller's Jackson-Magnolia line, or alternately, at the end of Seller's 4" line "M" at approximately Station 68 + 66 on Seller's said Jackson-Magnolia line 170 Mef "
6. Jackson Packing Company; tap located at approximately Station 28 + 16 on Seller's Jackson-Magnolia line 130 Mef "
7. Swift & Company; tap located at approximately Station 32 + 49 on Seller's Jackson-Magnolia line 300 Mef "
8. Tougaloo College; tap located at the terminus of the 3" line serving Tougaloo College, said line beginning at approximately Station 920 + 90 on Seller's Jackson-Mobile Main Line 200 Mef "

(1335)

1335

C. At the outlet side of metering and regulating stations to be constructed by Seller and located as follows:

1. Town Border # 6; located at approximately Station 5942 + 33 on Seller's Sterlington-Jackson line near the intersection of said line and Miss. Highway # 18 in Section 23, T-5-N, R-1-W, Hinds County, Mississippi

4,500 Mcf

2. Town Border # 7; located at approximately Station 1006 + 00 on Seller's Jackson-Mobile Main Line near the intersection of said line and Old Canton Road in Section 13, T-6-N, R-1-E, Hinds County, Mississippi

6,000 Mcf

UNITED GAS PIPE LINE COMPANY

By A. D. GREENE  
Vice President

OK AJ

MISSISSIPPI VALLEY GAS COMPANY

(Buyer)

By (Illegible)  
Vice President

1336

Supersedes S.A. dtd. 6/6/53  
Accepted for Filing to Become  
Effective 4/1/56

SUPERSEDED

## SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of November, 1955, by and between UNITED GAS PIPE LINE

COMPANY, a Delaware Corporation, hereinafter called "Seller," and MOBILE GAS SERVICE CORPORATION, an Alabama corporation, hereinafter called "Buyer,"

**WITNESSETH:**

In consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

**ARTICLE I**

**SCOPE OF AGREEMENT**

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas as follows: Natural gas for all of Buyer's General Service requirements for resale and distribution through Buyer's distribution system as now constructed and as same may be hereafter extended, in the Cities of Mobile, Prichard and Chickasaw and the Communities of Spring Hill, Cottage Hill, and Whistler, and all of their environs, and all of Buyer's requirements of natural gas for resale to those certain rural consumers served through farm taps and rural service lines along and in the vicinity of Seller's pipe lines, as are connected on the date hereof, all being located in Mobile County, Alabama, and all of Buyer's requirements of natural gas for its three certain rural farm tap consumers, namely; Dan Steadham, Oline Steadham and B. P. Steadham, all located in Section 35, Township 3 South, Range 2 West, Mobile County, Alabama, to be served through taps to be made on Seller's proposed tap line extending from its main line to its Town Border Station No. 3 as described on Exhibit A attached hereto.



## ARTICLE II

### DELIVERY POINT, QUANTITY AND PRESSURE

Delivery of natural gas by Seller to Buyer for each distribution system (not including farm taps and rural service lines) shall be made at the outlet of Seller's facilities at the points designated on Exhibit "A" attached to this Service Agreement, and at any additional point or points mutually agreed upon by the parties and added by revising Exhibit "A". The maximum quantity of gas

#### 1337

deliverable by Seller to Buyer hereunder in any one day at any delivery point shall be the quantity specified for such delivery point in Exhibit "A", provided that the aggregate volume deliverable on any day at all such delivery points hereunder shall not exceed the Maximum Daily Quantity stated in Article III hereof.

Such gas shall be delivered hereunder at such pressure (not to exceed one hundred (100) pounds or such pressures as may be shown in Exhibit "A") as may be necessary to meet Buyer's requirements, from time to time, at said points of delivery.

Buyer agrees to take and receive gas hereunder at the pressure herein provided for and thereafter to regulate and control said gas to the extent necessary for its operations.

## ARTICLE III

### MAXIMUM DAILY QUANTITY

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to receive from Seller, in any one day, more than an aggregate

of 75,000,000 cubic feet of gas, which quantity is hereby designated as Seller's "Maximum Daily Quantity."

Should Buyer desire, at any time any increase in maximum daily deliveries from Seller over and above the Maximum Daily Quantity of Seller, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the Maximum Daily Quantity hereunder shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the Maximum Daily Quantity shall remain unchanged.

### 1338

For each Billing Area Unit covered by this Service Agreement, where Seller supplies to Buyer less than the entire requirements of gas for Buyer's distribution system or facilities served under this Service Agreement, Buyer shall, as nearly as practicable, receive gas hereunder at the same hourly and daily load factor as that at which Buyer receives its entire requirements of gas for such distribution system or facilities.

## ARTICLE IV

### SALES TO RURAL CONSUMERS

Where provision is made in Article I hereof for sale of gas for the purpose of this Article IV, Seller will deliver gas in addition to the quantities specified in Articles II and III to Buyer in accordance with Section 4.5 of the General Terms and Conditions of Seller's Tariff for resale by Buyer for domestic purposes to rural consumers through farm taps and rural service lines along and in the vicinity of Seller's pipe lines adjacent to and in the same general territory as any distribution system of Buyer supplied by Seller. Upon request therefor by Seller, Buyer will sell gas, purchased from Seller, to such rural consumers, for such purposes in accordance with Buyer's standard and applicable service policy, rate and contract, and all gas sold by Seller to Buyer for such purposes will be delivered to Buyer at the cut off valves at the termini of Seller's service taps, installed and operated above ground at Seller's cost and expense along and adjacent to its pipe line.

## ARTICLE V

### PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule DG-J, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.



1339

## ARTICLE VI

## TERM

This agreement shall become effective on completion of Town Border Station #3 as described in EXHIBIT A hereto attached and upon natural gas being delivered through the same and shall continue and remain in force and effect for a period extending to July 25, 1962.

## ARTICLE VII

## MODIFICATION

No modification of the terms and provisions of this Service Agreement, other than in Exhibit "A" as herein provided for, shall be or become effective except by the execution of a superseding Service Agreement.

## ARTICLE VIII

## SUBJECT HEADINGS

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.

## ARTICLE IX

## AGREEMENTS BEING SUPERSEDED

This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

Service Agreement dated June 6, 1955.

Both parties shall be released from any and all obligation under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered hereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

#### ARTICLE X

##### CHANGE OF OWNERSHIP

If all or any part of Buyer's distribution system or systems into which the gas sold hereunder is received are voluntarily sold or exchanged by Buyer, then and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such facilities to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement, and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will thereby be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement applicable to the property so sold or exchanged, and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

1341

## ARTICLE XI

## SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate originals.

UNITED GAS PIPE LINE COMPANY

By A. D. GREENE  
*Vice President*

ATTEST:

B. H. WINHAM  
*Secretary*

MOBILE GAS SERVICE CORPORATION  
(Buyer)

By MAURICE WHITE  
*President*

ATTEST:

DAN M. JOHNSTON  
*Secretary*



(1342)

1342

**EXHIBIT A**

**Effective as set forth in Article VI, Term, to  
Service Agreement dated November 10, 1955**

<b>Delivery Point Location</b>	<b>Maximum Daily Quantity</b>	<b>Delivery Pressure</b>
<b>Town Border Station #1, located on lots 1, 2 and 3, of Block 4 of Meehem &amp; Sage's Second Subdivision of La Fargus Tract, Mobile County, Alabama</b>	<b>13,000 Mcf</b>	<b>Not to exceed 100 p.s.i.g.</b>
<b>Town Border Station #2, located on lot 12 of Block 5, of Moltons Addition to Whistler and Chickasaw, Mobile County, Alabama</b>	<b>13,000 Mcf</b>	<b>Not to exceed 100 p.s.i.g.</b>
<b>Town Border Station #3 to be located on Seller's metering and regulating station site north of the City of Mobile Waterworks Department in the SW <math>\frac{1}{4}</math> of NE <math>\frac{1}{4}</math> of SW <math>\frac{1}{4}</math> of Sec. 2, T-4-S, R-2-W, Mobile County, Alabama</b>	<b>49,000 Mcf</b>	<b>Not to exceed 100 p.s.i.g.</b>

**UNITED GAS PIPE LINE COMPANY**

**By A. D. GREENE**  
*Vice President*

**MOBILE GAS SERVICE CORPORATION**  
**(Buyer)**

**By MAURICE WHITE**  
*President*

.....

1579

June 10, 1952.

## Reference F.P.C. Rate Schedule No. 128-A

## UNITED GAS PIPE LINE COMPANY

This statement is made pursuant to Section 154.85 of the Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Southern Natural Gas Company, dated as of May 7, 1951.

This contract continued in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract remain in effect and have not been superseded by said Gas Tariff:

	Part Retained
Preamble	All
Article 1	All
Article 2	All except last paragraph of Section 2
Article 4	First and fourth paragraphs only
Article 6	2nd and 3rd sentences of the first paragraph for the sole and limited purpose of defining all quantities set out in Article 2.
Article 11	All
Article 13	First sentence and first 56 words of the second sentence.
Article 15	All
Article 17	All
Testimonium Clause and Signatures	All

(1580)

1580

UNITED GAS PIPE LINE COMPANY

Rate Schedule FPC No. 126-A

Effective Date: 7-23-52

Filing Date: 7-2-52

(Supersedes FPC No. 87)

SUPERSEDED

## GAS SALES CONTRACT

THIS AGREEMENT, made as of the 7th day of May, 1951 by and between UNITED GAS PIPE LINE COMPANY, a corporation of the State of Delaware (herein called "Seller") party of the first part, and SOUTHERN NATURAL GAS COMPANY, a corporation of the State of Delaware (herein called "Buyer"), party of the second part;

WHEREAS, Seller and Buyer are parties to an agreement dated September 7, 1945, providing for the sale by Seller to Buyer of gas produced in the Carthage field, as therein defined; and

WHEREAS, Seller is not obligated to sell and deliver gas to Buyer under said contract of September 7, 1945, except to the extent therein provided from lands and/or leases in the Carthage field then or thereafter owned by Seller or subject to gas purchase contracts in favor of Seller; and

WHEREAS, certain of Seller's contracts for the purchase of gas produced in said Carthage field (herein sometimes called "Seller's field contracts") will expire by their terms prior to the expiration on October 31, 1965, of said contract of September 7, 1945, and Buyer desires that Seller renew or extend said contracts so as to enable Buyer to continue purchasing gas from Seller after the present expiration dates of said contracts;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That, in consideration of the premises and the mutual covenants herein contained, Seller and Buyer have agreed and do hereby agree as follows:



## 1582

This agreement shall cover a term ending on October 31, 1965.

• • • • •

## 1587

## ARTICLE 3

## (Price)

The prices to be paid by Buyer to Seller for all gas (except for gas delivered from the Floyd field pursuant to the provisions of Article 13 hereof and except for gas delivered pursuant to the provisions of Section 2 of Article 2 hereof) which Buyer takes hereunder shall be as follows:

## 1588

During each billing month hereof, the price payable hereunder shall consist of a Demand Charge and a Commodity Charge (both charges, including any adjustment of the Commodity Charge as provided for in Article 8 hereof, to be computed on a gas measurement pressure base of (8) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric pressure, without correction for deviation from Boyle's Law) as follows:

(i) A Demand Charge equal to thirty-eight cents (38¢) multiplied by the maximum number of Mcf delivered hereunder on any day during the twelve months' period ending with the close of the billing month; provided, however, that—

(a) during the twelve months' period commencing with the effective date hereof, the period for the computation of such maximum number of Mcf shall be the period commencing with the effective date hereof and ending with the close of the current billing month;

**(1588)**

- (b) if, and as often as, the Annual Quantity is reduced, the period for the computation of such maximum number of Mcf shall be the period (not, however, in excess of twelve (12) months) commencing with the effective date of such reduction in the Annual Quantity (i.e., the date specified in the notice confirming such reduction given by Seller to Buyer under the provisions of Article 2 hereof) and ending with the close of the current billing month;
- (c) if, by reason of errors or inaccuracies in the dispatching of gas, the quantity actually delivered on the day of

**1589**

maximum delivery was greater than the daily quantity which Buyer was entitled to take on such day, then the excess quantity shall be deducted from the quantity actually delivered for the purpose of computing the Demand Charge; and

- (d) if Seller, after being afforded a reasonable opportunity to do so, was unable, during any one or more days during the billing month, to deliver to Buyer the quantities of gas which Buyer elected to take on such day or days (up to but not in excess of 115% of  $1/365$  of the Annual Quantity specified in the annual notice for the year in which such billing month occurs), then the demand Charge for such billing month, computed as above provided, shall be reduced by subtracting therefrom an amount determined by multiplying the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days by one and twenty-five one hundredths cents (1.25¢); and

(ii) a Commodity Charge equal to five cents (5¢) per Mcf for all gas delivered hereunder.

(1606)

If deliveries commence hereunder on a day other than the first day of a month, the Demand Charge during such fractional first month shall be computed on a pro rata basis so as to give effect to the number of days in such month on which gas was delivered hereunder.

1605

ARTICLE 12

(Warranty of Title)

Seller warrants generally the title to all gas delivered hereunder and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties or charges thereon.

ARTICLE 13

(Purchase of Floyd Field Gas)

Seller has heretofore delivered and is at the time of the execution of this agreement delivering small quantities of gas to Buyer at a point of connection on Buyer's pipe line in West Carroll Parish, Louisiana, which gas is produced in the Floyd field in East and West Carroll Parishes, Louisiana. Seller shall have the right to continue the delivery of such gas, if delivered at the working pressure in Buyer's pipe line at the point of delivery, and Buyer agrees to receive the same, provided that the quantities so sold and so received shall be deemed to have been delivered under the provisions of this agreement but shall be paid for at the price of five and seventy-five one

1606

hundredths cents (5.75¢) per Mcf (such price to be computed on a gas measurement pressure base of eight (8)



(1606)

ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric pressure, without correction for deviation from Boyle's Law) which price shall be in lieu of the price stipulated in Article 3 hereof. The quantity of gas so delivered from the Floyd field shall be determined by the metering equipment now in place and shall be corrected to the unit of measurement specified in Article 6 of this agreement and shall be determined in accordance with all of the provisions of said Article 6, except where otherwise specifically provided to the contrary and except that the specific gravity of the gas shall be determined by joint tests on or as near the first day of each calendar month as practicable or as much oftener as is found necessary in practice. The method of test used shall be by Edwards Balance or by such other methods as shall be agreed upon by the parties. The regular tests, at the first of the month, shall determine the specific gravity to be used in the computations for the measurement of gas deliveries during such month or until changed by special tests, the special tests to be applicable from the date made and through the following days to and including the last day of such month or until further special tests are made.

The gas delivered under the provisions of this Article 13 shall be assumed to have a Btu content of 1,000 Btu per cubic foot, the tests for Btu content provided for in Article 8 hereof being specifically waived as to such gas.

#### ARTICLE 14

##### (Regulatory Authorities)

This agreement is subject to all present and future valid orders, rules and regulations of any regulatory body having jurisdiction.

1616

June 10, 1952

**Reference F.P.C. Rate Schedule No. 126-B****UNITED GAS PIPE LINE COMPANY**

This statement is made pursuant to Section 154.85 of the Federal Power Commission Rules and Regulations with reference to the existing Gas Transportation Agreement between United Gas Pipe Line Company and Southern Natural Gas Company, dated as of May 7, 1951.

This contract continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract remain in effect and have not been superseded by said Gas Tariff:

Preamble

Article I

Article III

Article IV

Article VI

**Part Retained**

All

All

First two paragraphs

All

2nd and 3rd sentences of the first paragraph for the sole and limited purpose of defining all quantities set out in Article I.

Article XI

Article XIII

Article XIV

Testimonium Clause and Signatures

All

All

All

All

1630

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet.

(1631)

(d) Shall not contain in excess of:

- (i) Three percent (3%) by volume of carbon dioxide;
- (ii) Two percent (2%) by volume of oxygen; or
- (iii) Two-tenths (0.2) gallons per thousand (1,000) cubic feet of those certain liquefiable hydrocarbons commonly referred to as natural gasoline, as determined by the charcoal adsorption method as prescribed by the American Gas Association in its testing code #101, effective January 1, 1933.

Except as otherwise specifically provided to the contrary in this Article all measurements of gas required in this Article shall be at a temperature of sixty degrees (60°) Fahrenheit and at an absolute pressure equivalent to thirty inches (30") of mercury at thirty-two degrees (32°) Fahrenheit. In addition to meeting the above specifications, the gas delivered hereunder shall be commercially free from dust, gum, gum-forming constituents, or other liquid or solid matter which might become separated from the gas in the course of transportation through pipe lines.

### VIII.

For the purposes of computing the charges for transportation in this Article VIII, the gas measurement pressure base shall be eight (8) ounces gauge

### 1631

pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric pressure, and no correction shall be made for deviation from Boyle's Law.

The transportation charge to be paid by Southern to United for all gas transported hereunder during each billing month shall be as follows:

**DEMAND CHARGE:** Thirty-eight cents (38¢) per Mcf of billing Demand per month.



The Billing Demand shall be the maximum volume of gas which Southern has elected to deliver to United for transportation hereunder in any one day, up to and including fifty-five thousand (55,000) Mcf (said maximum volume being measured upon the basis of measurement set forth in Article VI hereof, but converted to the basis of measurement set forth in this article for the purpose of computing all the charges hereof, the additional or excess transportation charge hereinafter stated applying to any excess), during the twelve (12) months period ending with the last day of the billing month; provided, however, that, during the initial twelve (12) months period beginning with the commencement of the term of this agreement, the Billing Demand shall be the maximum volume of gas which Southern has elected to deliver to United for transportation hereunder in any one day during the period of time starting with the beginning of the term hereof and ending the last day of the current billing month.

It is recognized that transportation of gas may commence hereunder on a day other than the first day of a month, and as a result the first month's operations hereunder will cover only a fraction of such month. Accordingly, the Demand Charge for transportation during such fractional first month shall be computed on a pro rata basis so as to give effect to the number of days in such month on which gas was transported hereunder.

### 1632

If United, after being afforded a reasonable opportunity to do so, was rendered unable, for any reason other than varying operating conditions referred to in Article II hereof, to redeliver to Southern on any day or days during any billing month the quantities of gas delivered to United by Southern on such day or days, up to said maximum daily quantity of fifty-five thousand (55,000) Mcf, con-

(1632)

verted for billing purposes only as hereinabove stated, then the Demand Charge for the billing month in question, determined as above provided, shall be reduced by subtracting therefrom an amount determined by multiplying one and twenty-five hundredths cents (1.25¢) by the total aggregate number of Mcf of United's deficiencies in redeliveries on such day or days.

In the event that United, in accordance with the provisions of the second paragraph of Article I hereof, elects to do so and does transport gas in excess of said maximum daily quantity of fifty-five thousand (55,000) Mcf, converted for billing purposes only as hereinabove stated, then there shall be added to the Demand Charge, as above provided, for such billing month, an additional or excess transportation charge of an amount determined by multiplying one and twenty-five hundredths cents (1.25¢) by the aggregate of the daily quantities of gas, in excess of said maximum daily quantity of fifty-five thousand (55,000) Mcf, converted for billing purposes only as hereinabove stated, during such billing month, which United has elected to transport for Southern in accordance with said provisions of Article I hereof.

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1639

Accepted for Filing to  
Become Effective: April 1,  
1953  
Superseded

### SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of September, 1952, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller"; and SOUTHERN NATURAL GAS COMPANY, a Delaware Corporation, hereinafter called "Buyer",

**WITNESSETH:**

In consideration of the covenants and agreements herein-after set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

**ARTICLE I****SCOPE OF AGREEMENT**

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas as follows:

Such quantities of gas each day as Buyer may request, within the limitations set forth in Article III of this agreement.

**ARTICLE II****DELIVERY POINT AND PRESSURE**

The point of delivery and the delivery pressures at such point shall be at the outlet side of a metering station of Seller located near the intersection south of Kosciusko, Mississippi of Seller's pipe line and Buyer's two 22 inch parallel pipe lines. The gas delivered by Seller to Buyer shall be delivered at the varying pressures existing in Seller's pipe line from time to time at such point of delivery, and Seller agrees that such delivery pressure will not be less than 600 pounds per square inch gauge.

**ARTICLE III****VOLUMETRIC OBLIGATIONS**

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to



**(1639)**

receive from Seller, a quantity of gas in excess of the Maximum Daily Quantity in any one day. For the purposes hereof, the term "Maximum Daily Quantity" shall mean a quantity of 100,000 Mcf of gas; provided, however, that Buyer shall have the right, exercisable at its election on written notice to Seller given at any time and from time to time prior to the expiration of the first contract year, to increase the Maximum Daily Quantity by such amount as is specified in such notice; and

**1640**

effective as of the date (which shall, however, be the first day of a calendar month) specified in such notice, such increase to be subject to the following conditions:

(a) the total aggregate amount of such increases shall not exceed 50,000 Mcf;

(b) Seller shall not be obligated to increase the Maximum Daily Quantity as of a date less than six (6) months from the date of said notice, nor prior to the commencement of deliveries under this service agreement;

(c) the Federal Power Commission grant all authorizations and take all actions necessary for such increase to take effect. In this regard, if Buyer elects as aforesaid to increase the Maximum Daily Quantity and, if the construction by Seller of any additional facilities is necessary to enable Seller to deliver such increased Maximum Daily Quantity, then Seller agrees promptly upon receipt of notice from Buyer to file an appropriate application with the Federal Power Commission for the issue of a certificate of public convenience and necessity authorizing Seller to construct and operate such additional facilities. Seller agrees to prosecute such application with due diligence

and, upon the issuance of an appropriate certificate in form acceptable to Seller, to commence and prosecute with due diligence the construction of the facilities covered thereby necessary for the delivery hereunder of such increased Maximum Daily Quantity.

Such increased Maximum Daily Quantity shall be incorporated in a new service agreement to be filed with the Federal Power Commission in accordance with its rules and regulations.

Buyer shall have the right to increase the Maximum Daily Quantity in the manner and subject to the conditions and limitations set forth above, notwithstanding the provisions of the last two paragraphs of this Article III.

If at any time, and from time to time, during the term hereof, Seller shall be unable, for any five or more consecutive days, or for a total of ten or more days, whether or not consecutive, during any one billing month, to deliver to Buyer, for any reason other than dispatching variations, Unavoidable Accident, or failure of Buyer to afford Seller a reasonable opportunity to make such delivery, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity then in effect, then Buyer shall have the right, at its option, to reduce such Maximum Daily Quantity by subtracting therefrom an amount equal to the average of Seller's deficiencies in delivery on such five days or such ten days, as Buyer may elect, below said Maximum Daily Quantity. Buyer shall notify Seller in writing of its election to exercise its option to so reduce the Maximum Daily Quantity within sixty (60) days from the date its right to do so accrues, or said option shall be waived, but no such waiver shall operate or be construed as a waiver of any right to exercise said option which may arise in the future. Any reduction so made in the Maximum Daily Quantity shall be

**(1640)**

effective on the first day of the billing month immediately following the date of such notice, or as soon thereafter as any requirements of regulatory bodies having jurisdiction can be met, and such

**1641**

reduced Maximum Daily Quantity shall continue in effect thereafter unless and until further changed in accordance with the provisions hereof.

For the purposes of this Article, the term "Unavoidable Accident" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rulers and people, civil disturbances, explosions, breakage or accident to wells, machinery, or lines of pipe, the necessity for making repairs or alterations thereto, freezing of wells or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming the existence of an unavoidable accident; provided, however, that said term shall not mean or include any cause which by the exercise of due diligence of the party claiming the existence of an unavoidable accident is able to overcome; and provided further, that in no event shall said term mean or include partial or entire failure or depletion of gas wells or sources of supply where such failure or depletion results from or is due to the exhaustion or insufficiency of gas in said wells or sources of supply.

Should Buyer desire, at any time, any increase in deliveries from Seller, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term



of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

4 If the notice from Seller states that it will furnish the additional quantities of gas, the volumes deliverable shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the volumetric obligations shall remain unchanged.

#### ARTICLE IV

##### PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule PL-1, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

1642

#### ARTICLE V

##### TERM

This agreement shall become effective on the date both Buyer and Seller have completed construction of the respective facilities necessary to enable Seller to deliver and Buyer to receive the Maximum Daily Quantity and shall

**(1642)**

continue and remain in force and effect for a period of 20 years from the first day of the billing month immediately following the date on which deliveries hereunder were commenced, and shall continue in force and effect thereafter for successive periods of one (1) year each, unless or until terminated either by Seller or by Buyer upon Twelve (12) months' prior written notice to the other party hereto, specifying a termination date at the end of such primary term or of any yearly period thereafter.

#### **ARTICLE VI**

##### **MODIFICATION**

No modification of the terms and provisions of this Service Agreement shall be or become effective except by the execution of a superseding Service Agreement.

#### **ARTICLE VII**

##### **SUBJECT HEADINGS**

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.

#### **ARTICLE VIII**

##### **AGREEMENTS BEING SUPERSEDED**

This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

none

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Serv-

(1643)

ice Agreements except as to the obligation of Buyer to pay for all gas delivered thereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

1643

ARTICLE IX

SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

In Witness Whereof, the parties hereto have executed this agreement in duplicate originals.

UNITED GAS PIPE LINE COMPANY

By s/ A. D. GREENE  
*Vice President*

Attest:

s/ B. H. WINHAM  
*Secretary*

(Seal)

SOUTHERN NATURAL GAS COMPANY

(Buyer)

By s/ C. P. RATHER  
*President (Title)*

Attest:

s/ H. D. McHENRY  
*Secretary*

(Seal)



(1825)

1825

**Reference F.P.C. Rate Schedule No. 73-A**

**UNITED GAS PIPE LINE COMPANY**

This statement is made pursuant to Section 154.85 of Federal Power Commission Rules and Regulations with reference to the existing Gas Sales Agreement between United Gas Pipe Line Company and Texas Gas Transmission Corporation, or their predecessors in title, dated April 16, 1945, as amended and supplemented:

This Contract, as amended and supplemented, continues in effect as an executed Service Agreement for service to the extent that the provisions thereof are not superseded by or inconsistent with the applicable provisions of the Rate Schedules and General Terms and Conditions of United Gas Pipe Line Company's Federal Power Commission Gas Tariff.

The following provisions of said Contract, and amendments and supplements thereto (herein identified by F.P.C. Supplement Number to the above numbered Rate Schedule) remain in effect and have not been superseded by said Gas Tariff:

	Part Retained
Preamble	All
Article I	All
Article II	All
Article III	All
Article IV	All
Article V	All except the second paragraph.
Article VI	All
Article VIII	First two sentences of first paragraph for the sole and limited purpose of defining all quantities set out in Articles III, IV, and V.
Article X	All of the first paragraph except the first 33 words.
Article XI	All except the first sentence of last paragraph.
Article XIII	First paragraph.
Article XV	All
Article XVI	All
Testimonium Clause and Signatures	All
Supplements:	
Supplement No. 3	All including Statements I, II, III and IV attached thereto.
Supplement No. 5	All
Supplement No. 7	All

1827

Federal Power Commission Received May 9 1945

**MONROE AGREEMENT**

This Agreement made as of the 16th day of April, 1945, by and between United Gas Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller", and Memphis Natural Gas Company, a corporation of the State of Delaware, hereinafter referred to as "Buyer";

Whereas, Buyer is the owner and operator of a gas pipe line system presently situated in the States of Louisiana, Arkansas, Mississippi and Tennessee, and is desirous of extending and enlarging its existing pipe line facilities; and

Whereas, Buyer purchases gas for the operation of and sale of gas from its pipe lines as they may exist from time to time; and

Whereas, Industrial Gas Company, a corporation of the State of Florida, entered into a certain agreement dated May 24, 1928, with Buyer whereby Industrial Gas Company agreed to sell and deliver to said Buyer certain natural gas under the conditions and on the terms set forth therein; and

Whereas, Industrial Gas Company made and entered into a certain agreement dated January 7, 1930, with the following corporations: (1) Southern Carbon Company, (2) Interstate Natural Gas Company, Incorporated and Hope Producing Company, (3) United Carbon Company, and (4) The Palmer Corporation of Louisiana, whereby such corporations respectively assumed certain of the rights and obligations of Industrial

1828

Gas Company under said agreement with Buyer dated May 24, 1928; and

101

(1829)

Whereas, Seller, through mesne assignments and conveyances has acquired the rights, interests and liabilities of said Industrial Gas Company and said The Palmer Corporation of Louisiana under said agreements of May 24, 1928, and January 7, 1930; and

Whereas, Southern Carbon Company, Interstate Natural Gas Company, Incorporated and Hope Producing Company, United Carbon Company, and Seller have entered into an agreement of even date herewith wherein all of said corporations have agreed that said agreement of January 7, 1930, shall be cancelled when and if this instant agreement and the other agreements referred to in Article XIII hereof become effective in the manner set forth in said Article XIII; and

Whereas, Buyer and Seller desire to revise, alter and amend said agreement of May 24, 1928, effective when and if this instant agreement and the other agreements referred to in Article XIII hereof become effective in the manner set forth in said Article XIII.

Now, Therefore, This Agreement Witnesseth:

That in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby covenant and agree as follows:

• • • • •

1854

#### ARTICLE IX.

The price to be paid by Buyer to Seller for all gas delivered hereunder shall be eight cents (8¢) for each one thousand (1,000) cubic feet of gas delivered.

The above price shall be adjusted by increase or decrease, as the case may be, to the extent that the severance tax imposed by the State of Louisiana may, from time to time,



(1855)

be in excess of or less than nine one-hundredths of one cent (\$0.0009) per one thousand (1,000) cubic feet of gas, with appropriate corrections to such increase or decrease to compensate for the variations between the pressure bases at which gas is measured for the purposes of (a) the original severance tax rate of \$0.0009, which base was ten ounces above fourteen and four-tenths (14.4) pounds per square inch, (b) the sale and purchase of gas under this agreement as set out in Article VIII hereof, and (c) the increased or decreased severance tax.

In addition to the above adjustment for taxes, Buyer agrees to pay Seller one-half of the taxes paid by Seller (or by any persons from whom Seller acquires the gas which it delivers hereunder) under the provisions of Act No. 132 of the Regular Session of the Louisiana Legislature for 1944 (Louisiana State Gathering Tax Act) with respect to gas sold and delivered hereunder; such payments to be made quarterly.

### 1855

and to be made so long as said Act continues in force and effect.

### ARTICLE X.

As used herein the terms "gas" and "natural gas" denote natural gas whether produced from wells producing gas only or from wells producing gas together with crude petroleum oil or other liquid hydrocarbons; the term "contract year" denotes a period of time commencing at 8:30 o'clock on the morning of November 1st and ending at the same hour of November 1st of the next succeeding calendar year; the term "month" denotes a calendar month commencing at 8:30 o'clock in the morning of the first day thereof and ending at the same hour of the first day of the next succeeding calendar month; and the term "day" denotes a period of twenty-four hours commencing at 8:30

(1855)

o'clock in the morning and ending at 8:30 o'clock in the next morning.

Seller shall render to Buyer on or before the fifteen day of each month a statement showing the amount of natural gas delivered to Buyer during the month immediately preceding and of the amount of payment or payments then due from Buyer to Seller therefor.

Buyer agrees to pay Seller at its office in Monroe, Louisiana, on or before the 25th day of the month for all gas deliveries during the preceding month. Should Buyer fail to pay any amount due from it to Seller when such amount is due, interest thereon shall accrue at six per cent (6%) per annum from the date when such amount was due to the date of payment.

1858

#### ARTICLE XIII

The term of this agreement shall commence on the effective date hereof as defined in this Article XIII and, unless sooner terminated in accordance with the provisions of this Article XIII or the provisions of Article XV hereof, shall end on October 31, 1960.

(1869-A)

**1869-A**

100-Z  
G-CONTRACTS

UNITED GAS PIPE LINE COMPANY  
Supplement No. 1  
Effective Date: December 10, 1945  
Filing Date: May 9, 1945  
to  
Rate Schedule FPC No. 78-A.

Filed May 9, 1945

UNITED GAS PIPE LINE COMPANY

April 16, 1945

Memphis Natural Gas Company  
Memphis, Tennessee

Gentlemen:

Please refer to the agreement between the undersigned, as Seller, and you, as Buyer, of even date herewith for the sale and purchase of certain quantities of gas, which agreement is designated as our "Monroe Agreement."

In lieu of the prices and adjustments set out in Article IX of said agreement, the undersigned will, in the event said agreement becomes effective in accordance with the provisions of Article XIII thereof, accept payment from you on the following basis, subject to the revocation rights mentioned in the last paragraph of this letter:

The undersigned will bill you for and accept payment for all gas delivered by the undersigned to you under said agreement at the rate of 5.76¢ per one thousand (1,000) cubic feet of gas, subject to the adjustment hereinafter provided. The volume of gas subject to such price (as adjusted) shall be the volume obtained by converting the quantities of gas measured under said agreement from the pressure base (8 ounces above 14.65 pounds) specified in said agreement to the pressure base of 8 ounces above 14.4 pounds atmospheric pressure. Such conversion is solely for



**(1869-A)**

the purpose of arriving at the amounts payable under this letter.

The above price is based upon taxes as they existed on April 1, 1943, insofar as they affect the undersigned's cost, directly or indirectly. In the event such taxes are thereafter increased or decreased, an adjustment will be made in the above price in the manner and to the extent hereinafter provided.

The term "tax" as used herein shall mean:

Any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "tax" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or of the right to do business within the state as a foreign corporation.

**1869-B**

To the extent that the weighted average amount of all such taxes lawfully required to be paid by the undersigned with respect to any one thousand (1,000) cubic feet of gas delivered under said agreement during any month shall exceed the weighted average amount of all such taxes required to be paid by the undersigned with respect to each one thousand (1,000) cubic feet of gas delivered by the undersigned to you through its own meters and gathering systems during the calendar month of March, 1943, the undersigned will for the month in question increase the above price

of 5.75¢ per one thousand (1,000) cubic feet by an amount equal to one hundred per cent (100%) of such excess.

To the extent that the weighted average amount of all such taxes lawfully required to be paid by the undersigned with respect to any one thousand (1,000) cubic feet of gas delivered under said agreement during any month shall be less than the weighted average amount of all such taxes required to be paid by the undersigned with respect to each one thousand (1,000) cubic feet of gas delivered by the undersigned to you through its own meters and gathering lines during the calendar month of March, 1943, the undersigned will for the month in question reduce the above price of 5.75¢ per one thousand (1,000) cubic feet by an amount equivalent to one hundred per cent (100%), of such decrease; provided, however, that to the extent such decrease is brought about by a reduction in the rate of the gathering tax imposed by the State of Louisiana (which gathering tax is at the present time one-half cent ( $\frac{1}{2}$ ¢) per one thousand (1,000) cubic feet one-half ( $\frac{1}{2}$ ) of which tax has heretofore been borne by the undersigned without any reimbursement therefor from you) only one-half ( $\frac{1}{2}$ ) of such decrease so brought about by such reduction shall be utilized in reducing the price of gas delivered hereunder during the month in question.

For the purpose of determining the adjustment as aforesaid, any such tax lawfully required to be paid by any corporation, all of the outstanding stock of which of all classes is owned by a corporation which in turn owns all outstanding stock of all classes of the undersigned, and any such tax which the undersigned under contractual obligation refunds to the person or com-

**(1869-B)**

pany lawfully required to pay the same, shall, unless constituting a duplication of the like tax paid by the undersigned, be considered to have been paid by the undersigned.

The above prices shall continue in effect until revoked by the undersigned pursuant to written notice of such revocation to be given you not less than sixty (60) days prior to the effective date thereof.

**1869-C**

From and after the effective date of such revocation notice, provided the same shall have been permitted by the Federal Power Commission (if such Commission at such time has lawful jurisdiction over such matters) to become effective, the prices to be paid for said gas shall be the prices determined in accordance with the provisions of said Monroe Agreement.

Very truly yours,

UNITED GAS PIPE LINE COMPANY

By (Sgd.) R. H. HARGROVE  
Vice President

**1898**

Received Aug. 21, 4:16 P.M. '52

Accepted for Filing to Become  
Effective: 8-15-53

### **SERVICE AGREEMENT**

THIS AGREEMENT, made and entered into this 11th day of August, 1952, by and between United Gas Pipe Line Company, a Delaware Corporation, hereinafter called "Seller", and Texas Gas Transmission Corporation, a Delaware corporation, hereinafter called "Buyer",



## WITNESSETH:

In consideration of the covenants and agreements herein-after set forth, to be kept and performed by the parties hereto, it is agreed by and between said parties as follows:

## ARTICLE I

## SCOPE OF AGREEMENT

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas as follows:

Such quantities of gas each day as Buyer may request, within the limitations set forth in Article III of this agreement.

## ARTICLE II

## DELIVERY POINT AND PRESSURE

The points of delivery and the delivery pressures at such points shall be:

- (a) Two points in Claiborne Parish, Louisiana; one of said points being located near the Claiborne Gasoline Plant in Section 20, Township 21 North, Range 4 West; and the other of said delivery points being located near Buyer's Sharon Compressor Station in Section 34, Township 21 North, Range 4 West. At such points, the gas delivered by Seller to Buyer shall be delivered against the varying pressures existing from time to time in Buyer's Lisbon Line at said delivery points, which pressures in said line shall not exceed 530 pounds per square inch gauge.
- (b) At the outlet side of a metering station constructed by Seller at or near Buyer's Guthrie Compressor Station located in Section 35, Township 20 North, Range

(1886)

4 East, Ouachita Parish, Louisiana. At such point, the gas delivered by Seller to Buyer shall be delivered at the varying pressures existing in Seller's pipe line from time to time, and Seller agrees that such delivery pressures will not be less than 450 pounds per square inch gauge.

### ARTICLE III

#### VOLUMETRIC OBLIGATIONS

Unless and until increased pursuant to the later provisions of this Article, Seller shall not be required to deliver to Buyer hereunder, and Buyer shall not be entitled to receive from Seller, a quantity of gas in excess of the Maximum Daily Quantity in any one day. For the purposes hereof, the term "Maximum Daily Quantity" shall mean a quantity of 200,000 MCF of gas.

Seller shall have the right to deliver to Buyer each day at the delivery points specified under (a) of Article II of this agreement such portion of the quantity of gas deliverable hereunder on such day as Seller desires, up to a total aggregate maximum quantity of 50,000 MCF in any one day. The remaining portion of the quantity of gas deliverable hereunder on such day shall be delivered to Buyer at the delivery point specified under (b) of Article II of this agreement.

1887

If at any time, and from time to time, during the term hereof, Seller shall be unable, for any five or more consecutive days, or for a total of ten or more days, whether or not consecutive, during any one billing month, to deliver to Buyer, for any reason other than dispatching variations, unavoidable accident, or failure of Buyer to afford Seller a reasonable opportunity to make such delivery, the quantities of gas requested by Buyer on such day or days

up to the Maximum Daily Quantity then in effect, then Buyer shall have the right, at its option, to reduce such Maximum Daily Quantity by subtracting therefrom an amount equal to the average of Seller's deficiencies in delivery on such day or days below said Maximum Daily Quantity. Buyer shall notify Seller in writing of its election to exercise its option to so reduce the Maximum Daily Quantity within sixty (60) days from the date its right to do so accrues, or said option shall be waived, but no such waiver shall operate or be construed as a waiver of any right to exercise said option which may arise in the future. Any reduction so made in the Maximum Daily Quantity shall be effective on the first day of the billing month immediately following the date of such notice, or as soon thereafter as any requirements of regulatory bodies having jurisdiction can be met, and such reduced Maximum Daily Quantity shall continue in effect thereafter unless and until further changed in accordance with the provisions hereof.

For the purposes of this Article, the term "Unavoidable Accident" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rulers and people, civil disturbances, explosions, breakage or accident to wells, machinery or lines of pipe, the necessity for making repairs or alterations thereto, freezing of wells or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise not within the control of the party claiming the existence of an unavoidable accident; provided, however, that said term shall not mean or include any cause which by the exercise of due diligence of the party claiming the existence of an unavoidable accident is able to overcome; and provided further, that in no



(1987)

event shall said term mean or include partial or entire failure or depletion of gas wells or sources of supply where such failure or depletion results from or is due to the exhaustion or insufficiency of gas in said wells or sources of supply.

Should Buyer desire, at any time, any increase in deliveries from Seller, it may notify Seller in writing of the amount of the increase desired and of the date it desires the increased deliveries commenced. Within 120 days from the receipt of the notice, Seller shall notify Buyer in writing whether or not, considering, (a) the remaining term of the Service Agreement, (b) the requirements of Seller's other customers, (c) Seller's available gas and system capacity, and (d) whether Seller can obtain the necessary governmental authorizations and obtain and install any necessary additional equipment and facilities within the required time, Seller will be willing to furnish to Buyer the additional quantities of gas stated in Buyer's notice.

If the notice from Seller states that it will furnish the additional quantities of gas, the volumes deliverable shall be increased to include such additional gas effective on the date the parties agree upon in the new Service Agreement prepared to reflect the new understanding. If the notice from Seller states it will not deliver the additional quantities of gas covered by Buyer's notice, the volumetric obligations shall remain unchanged.

#### ARTICLE IV

##### PRICE

All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule PL-4, or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to

(1888)

the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.

## ARTICLE V

### TERM

This agreement shall become effective on the date Buyer completes construction of facilities necessary to take the Maximum Daily Quantity from Seller, (which date Buyer estimates will be not later than July 1, 1953) and shall continue and remain in force and effect for a period of 25 years from the first day of the billing month immediately following said date on which deliveries hereunder were commenced, and shall continue in

1888

force and effect thereafter for successive periods of one (1) year each, unless and until terminated either by Seller or Buyer upon twelve (12) months' prior written notice to the other party, specifying a termination date at the end of such primary term or of any yearly period thereafter.

## ARTICLE VI

### MODIFICATION

No modification of the terms and provisions of this Service Agreement shall be or become effective except by the execution of a superseding Service Agreement.

## ARTICLE VII

### SUBJECT HEADINGS

The subject headings of the Articles of this agreement are inserted for convenient reference and are not to be considered in any interpretation of same.

## ARTICLE VIII

### AGREEMENTS BEING SUPERSEDED

This agreement supersedes, cancels and terminates, of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth Article I hereof:

(a) Agreement dated April 16, 1945 between Seller and Memphis Natural Gas Company designated and known as the "Outside Supply Agreement", Buyer having succeeded to all the rights and obligations of Memphis Natural Gas Company; and

(b) Agreement dated April 16, 1945 between Seller and Memphis Natural Gas Company designated and known as the "Transportation Agreement", Buyer having succeeded to all the rights and obligations of Memphis Natural Gas Company.

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered thereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made.

## ARTICLE IX

### SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.



(2379)

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate originals.

TEXAS GAS TRANSMISSION CORPORATION  
(Buyer)

By WM. ELMER  
(Title)

*Vice President and Treasurer*

ATTEST: (

E. O. STOOLHOFF  
*Ass't. Secretary*

UNITED GAS PIPE LINE COMPANY

By ED PARKES  
*Vice President*

ATTEST:

B. H. WINHAM  
*Secretary*

2379

Filed Oct. 21, 1955

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman,  
Claude L. Draper, Frederick Stueck and William R.  
Connoles.

Docket No. G-9547  
100-2 FORMAL

In the Matter of

UNITED GAS PIPE LINE COMPANY

**Order Suspending Proposed Increases in Rates**

United Gas Pipe Line Company (United), on September  
30, 1955, tendered for filing First Revised Sheet Nos. 1, 4,

(2379)

6, 8, 10, 12, 14, 16, 17, 17-A, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 99, 100, 101, 102, 103, 104, and revised Title Sheet, to its FPC Gas Tariff, First Revised Volume No. 1 and First Revised Sheet Nos. 54 and 57 to its FPC Gas Tariff, Original Volume No. 1 proposing to take effect as of November 1, 1955. By said filing United proposes a general rate increase to all of its sales for resale subject to the jurisdiction of the Commission, except transportation for others. Said increase is estimated to be approximately \$9,978,000 per year based on a test year ending April 30, 1955, as adjusted, or an increase of approximately 14 per cent.

United bases part of its proposed rate increase on claimed increases in the cost of purchased gas. It does not appear that such increases in cost will occur in fact on November 1, 1955, nor can it now be determined the amount which United will actually incur. Additionally, United is claiming a rate of return of 6½ per cent, acquisition adjustment costs, an increased allowance for income taxes, and allocation of costs which do not appear to be justified. These, as well as other items of cost, have not been established and it appears that the increased rates and charges proposed in United's rate filing have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

Alabama Public Service Commission as well as numerous customer companies of United request that the proposed rates be investigated and after suspension a hearing be held to determine just and reasonable rates.

The Commission *finds*:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the

Natural Gas Act that the Commission enter upon a hearing concerning

### 2380

the lawfulness of the rates proposed by United in its filing of September 30, 1955, and that the rates in the above-designated tariff sheets<sup>1</sup> be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

- (A) Pursuant to the authority contained in Sections 4, 5, and 15 of the Natural Gas Act and the Commission's General Rules and Regulations (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the rates and charges proposed by United in its filing of September 30, 1955; and, pending such hearing and decision thereon, First Revised Sheet Nos. 1, 4, 6, 8, 10, 12, 14, 21, 22, 23, 25, 26, 27, 28, 30, 32, 99, 100, 101, 102, 103, 104, and Revised Title Sheet to its FPC Gas Tariff, First Revised Volume No. 1, and proposed First Revised Sheet, Nos. 54 and 57 to its FPC Gas Tariff, Original Volume No. 1, be and the same hereby are suspended and the use thereof deferred until April 1, 1956, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.
- (B) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)].

<sup>1</sup> First Revised Sheet Nos. 16, 17, 17-A, 18, 19, and 20 to First Revised Volume No. 1 pertain to sales of gas for resale for industrial use only and therefore may not be suspended pursuant to Section 7 of the Natural Gas Act.



(2390)

By the Commission.

J. H. GUTRIDE

J. H. Gutride,

*Acting Secretary.*

Adopted: October 21, 1955

Issued: October 26, 1955

2390

Received November 7, 1955

**Petition for Intervention by Memphis Light, Gas & Water  
Division, City of Memphis, Tennessee**

Comes now Memphis Light, Gas & Water Division, City of Memphis, Tennessee, and respectfully requests that it be permitted to intervene and become a party to this proceeding, and in support of this petition it respectfully states:

**I.**

The exact name and address of petitioner are as follows:

Memphis Light, Gas & Water Division  
179 Madison Avenue  
Memphis, Tennessee

**II.**

The names, titles and post office addresses of the persons to whom correspondence or communications should be addressed in regard to this petition are as follows:

Thos. H. Allen, President  
Memphis Light, Gas & Water Division  
179 Madison Avenue  
Memphis, Tennessee

2391

George E. Morrow, Attorney  
Martin & Tate  
705 Union Planters National Bank Bldg.  
Memphis, Tennessee

Reuben Goldberg, Esq.  
439 Wyatt Building  
Washington, D. C.

## III.

Memphis Light, Gas & Water Division is a division and agency of the City of Memphis, Tennessee, a municipal corporation, and was organized under Chapter 381 of the Private Acts of Tennessee for the year 1939, as amended. Among other things, it operates a local distribution system for the distribution and sale of natural gas throughout the City of Memphis and also in Shelby County, Tennessee. It is a city gate customer of Texas Gas Transmission Corporation, and the natural gas required in the operation of its distribution system is purchased exclusively from Texas Gas Transmission Corporation. Texas Gas Transmission Corporation, in turn, acquires a substantial portion of its gas supply by purchase from United Gas Pipe Line Company, so that Memphis Light, Gas & Water Division is substantially affected by the rates and charges demanded and received by United Gas Pipe Line Company.

## IV.

Petitioner states that the rates and charges to be demanded and received by United Gas Pipe Line Company are in issue in this proceeding, and that the same may be unjust, unreasonable, unduly discriminatory and preferential and may place an undue burden upon petitioner, and petitioner therefore has a substantial interest in the matters under consideration in this proceeding.

(2392)

2392

V.

Petitioner states that its interest is not represented by any other party to this proceeding:

WHEREFORE, your petitioner respectfully prays that it be permitted to intervene in this proceeding and be treated as a party thereto, with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard by counsel upon brief and oral argument, if oral argument is granted.

2395

Received November 9, 1955

**Notice of Intervention by the City of Memphis, Tennessee**

Comes now the City of Memphis, Tennessee, and respectfully represents unto the Commission that it has an interest in the above proceeding of such nature that intervention is necessary and appropriate, that the undersigned officer of said City has been authorized by resolution of the City Commission to initiate such intervention, and that:

1. The name, title and post office address of the persons to whom correspondence or communications should be addressed in all matters respecting this petition are as follows:

Mayor Waller Chandler  
Shelby County Courthouse  
Memphis, Tennessee

Frank B. Gianotti, Jr., City Attorney  
Shelby County Courthouse  
Memphis, Tennessee



George E. Morrow  
705 Union Planters National Bank Building  
Memphis, Tennessee

2. The City of Memphis is a municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within

**2396**

the City of Memphis and neighboring areas. The City of Memphis obtains all of its natural gas, through its agency, the Memphis Light, Gas & Water Division from the Texas Gas Transmission Corporation, and represents many thousands of consumers of natural gas purchased from said corporation. The application of United Gas Pipeline Company to increase its rates will materially affect the price of natural gas which it sells in large quantities to the said Texas Gas Transmission Corporation. The City, therefore, has a direct and immediate and substantial interest in the said application.

3. Wherefore the City of Memphis respectfully gives notice of its intervention in the above entitled proceedings in accordance with Section 15(a) of the Natural Gas Act and Section 1.8(a)(1) of the Commission's Regulations.

• • • • •

(2400)

2400

Received November 14, 1955

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of  
UNITED GAS PIPE LINE COMPANY

Docket No. G-9547

**Motion to Dismiss and Answer of United Gas Pipe Line Company to Petition for Intervention Filed by Memphis Light, Gas & Water Division, City of Memphis, Tennessee and to Notice of Intervention Filed by the City of Memphis, Tennessee**

I.

Now comes United Gas Pipe Line Company (hereinafter called United) and respectfully shows that the Petition for Intervention herein filed by Memphis Light, Gas & Water Division, City of Memphis, Tennessee, and the Notice of Intervention herein filed by the City of Memphis, Tennessee (both of said petitioners being hereinafter referred to as Memphis), should be denied and dismissed for the following reasons, to-wit:

As shown by said petition and notice Memphis is not a customer of United but purchases gas from Texas Gas Transmission Corporation which in turn purchases some of its gas from United.

2401

The alleged interest of Memphis cannot be directly affected in this proceeding, and the participation of Memphis is not in the public interest in any manner; on the contrary, if this Commission permits Memphis and

other parties similarly situated to intervene, an unnecessary burden will be placed upon this Commission, its Staff, United and other proper parties, and the record in this proceeding will be greatly enlarged and complicated.

As the Commission is fully aware and as demonstrated in FPC Docket Nos. G-1142, G-2019, et al, United sells gas to many different customers, and if a precedent be established by this Commission in permitting intervention by customers of United's customers, or customers of customers of United's customers, there will be virtually no end to the number of parties to this proceeding; the presence of a large number of unnecessary and improper parties will not be in the public interest and will on the contrary be against the public interest and will impede, delay and obstruct the proper and efficient administration of the Natural Gas Act by this Commission.

In view of the foregoing it is submitted that Memphis is not entitled to intervene herein under Section 15(a) of the Natural Gas Act or under Section 1.8 of the Rules of Practice and Procedure adopted by this Commission, and that, in any event, this Commission should in the sound exercise of its discretion restrict this proceeding to parties who may be directly affected herein.

2402

## II.

And now for answer to the above petition and notice to intervene and in all respects subject to the motion to dismiss hereinabove set forth, United denies generally and specifically each and every allegation set forth in said petition and notice to intervene, except such as it hereinafter specifically admits:



**(2402)**

1. The allegations in Paragraphs 1, 2 and 5 of said petition and Paragraph 1 of said notice are denied for lack of sufficient information upon which to base a belief.

2. For answer to Paragraph 3 of said petition and Paragraph 2 of said notice, United shows that it sells natural gas to Texas Gas Transmission Corporation under its tariff and service agreements which are on file with this Commission and lawfully effective. In all other respects the allegations in said paragraphs are denied as written.

3. The allegation in Paragraph 4 of said petition that United's proposed rates may be unjust, unreasonable, unduly discriminatory, and preferential and may place an undue burden upon petitioner is denied.

WHEREFORE, United prays that the petition and notice to intervene herein filed by the Memphis Light, Gas & Water Division and by the City of Memphis, Tennessee, respectively, be in all things denied and dismissed.

**2403**

United further prays for all orders necessary and for full, general and equitable relief in the premises.

Respectfully submitted,

UNITED GAS PIPE LINE COMPANY

Original Signed

By WILBERT O. CRAIN

Wilbert O. Crain

General Counsel

**Counsel for Applicant:**

**Wilbert O. Crain**

**Geo. D. Fiser**

**1525 Fairfield Avenue  
Shreveport, Louisiana**

**C. Huffman Lewis**

**P. O. Box 1707**

**Shreveport, Louisiana**

**Thomas Fletcher**

**11th Floor, Esperson Building  
Houston, Texas.**

**2404**

**STATE OF LOUISIANA**

**PARISH OF CADDO**

Personally came and appeared before me the undersigned, duly qualified and acting Notary Public, **WILBERT O. CRAIN**, who being by me, Notary, first duly sworn, deposes and says:

That he is General Counsel of United Gas Pipe Line Company and is duly authorized to make this affidavit and that the facts set forth and the allegations made in the above and foregoing Motion to Dismiss and Answer on behalf of United Gas Pipe Line Company are true and correct to the best of his knowledge and belief.

**Original Signed**

**WILBERT O. CRAIN**

Sworn to and subscribed before me on this 11th day of November, 1955.

**s/ FRANK O. LOONEY**

**Notary Public in and for  
Caddo Parish, Louisiana**

**My Commission is for life.**

**(Notarial Seal)**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on November 1, 1955, I served a copy of the foregoing Motion to Dismiss and Answer by mailing a copy thereof, postage prepaid and properly addressed, to the persons listed below:

Thos. H. Allen, President  
Memphis Gas, Light & Water Division  
179 Madison Avenue  
Memphis, Tennessee

Mayor Walter Chandler  
Shelby County Courthouse  
Memphis, Tennessee

Alabama Public Service Commission  
Birmingham, Alabama

Dated at Shreveport, Louisiana, this 11th day  
November, 1955.

Original Signed  
WILBERT O. CRAIN  
*Counsel*



2412

Received November 21, 1955

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL POWER COMMISSIONIn the Matter of  
UNITED GAS PIPE LINE COMPANY

Docket No. G-9547

Answer of City of Memphis, Tennessee to Motion of United  
Gas Pipe Line Company

Comes now the City of Memphis, Tennessee, and, for answer to the Motion of United Gas Pipe Line Company to dismiss the petition of Memphis to intervene, respectfully states:

## I.

The pleading of United Gas Pipe Line Company, so far as it applies to the City of Memphis, should not be accepted by the Commission for the reason that such pleading is not authorized by the Rules of Practice and Procedure of this Commission.

As has previously been recognized by the Commission, the City of Memphis is entitled to initiate intervention by notice of intervention,

2413

rather than by petition to intervene, and Memphis gave Notice of Intervention in this matter. The provisions of Section 1.8(e) of the Rules and Regulations authorize answers only to petitions to intervene, and not to notices of intervention by public bodies.

(2413)

If treated as a motion, the pleading of United Gas Pipe Line Company is equally invalid and unauthorized.

## II.

Further answering United's said pleading, the City of Memphis would show that this Commission has never denied intervention to public bodies on the ground that they represented the interests of "customers of customers" of a pipeline applicant. To follow that novel suggestion would mean virtually the elimination from Commission hearings of all representatives of consumer interests, since pipelines seldom sell directly to consumers. Such a ruling would be diametrically opposed to the policy of the Natural Gas Act and the Commission's Rules of Practice and Procedure, which give preferred status to a public body desiring intervention in a proceeding involving the interests of consumers which it represents.

The effect of United's extraordinary proposal would be to restrict participation in Commission hearings almost exclusively to representatives of utility interests. Nothing could be more out of keeping with the primary intent of Section 15(a) of the Natural Gas Act or the Commission's Rules, both of which contemplate participation by consumer representatives for

2414

the purpose of assuring that consumers are given "the lowest reasonable rates".

The City of Memphis accordingly prays:

(1) That the pleading herein filed by United be refused acceptance, so far as it concerns the intervention of Memphis, as not authorized by the Commission's Rules of Practice;

(2) That if said pleading of United is accepted, the motion be denied on the merits.

Respectfully submitted,

CITY OF MEMPHIS

By FRANK B. GIANOTTI

Frank B. Gianotti

*City Attorney*

Counsel for City of Memphis:

Frank B. Gianotti

Shelby County Courthouse

Memphis, Tennessee

George E. Morrow

705 Union Planters National Bank Building

Memphis, Tennessee

2415

### CERTIFICATE OF SERVICE

I, George E. Morrow, hereby certify that service of the above and foregoing instrument has been made this day by mailing copies thereof through the United States mail, postage prepaid, to the following:

W. Scott Wilkinson, Esquire

United Gas Pipe Line Company

United Gas Building

Shreveport 32, Louisiana

Ernest Willson, Attorney

Examiner, Alabama Public Service Commission

P. O. Box 991

Montgomery 1, Alabama

This 18th day of November, 1955.

GEORGE E. MORROW

George E. Morrow

*Attorney*



Received November 29, 1955

**Petition for Intervention**

Comes now your Petitioner, Mississippi Valley Gas Company, and respectfully petitions for leave to intervene in the above-entitled proceeding, and states in support of this Petition for Intervention:

1. Your Petitioner's full name and address is:

Mississippi Valley Gas Company  
711 West Capitol Street  
Jackson, Mississippi

2. The name and address of its attorney in this matter is:

Reuben Goldberg  
439 Wyatt Building  
777-14th Street, N. W.  
Washington 5, D. C.

3. The names, titles and post office address of the persons to whom correspondence or communications should be addressed in regard to this petition are as follows:

2428

Minor C. Summers, President  
Mississippi Valley Gas Company  
711 West Capitol Street  
Jackson, Mississippi

Reuben Goldberg  
439 Wyatt Building  
777-14th Street, N. W.  
Washington 5, D. C.

4. Your Petitioner is a corporation organized and existing under the laws of the State of Mississippi. Petitioner

is not presently domesticated in any other county, state or territory and does not now contemplate that it will become domesticated or do business in any other jurisdiction. The corporate charter issued to Petitioner authorized it to construct, operate, acquire, lease and own facilities used for the transportation, distribution and sale of natural gas.

5. Petitioner presently obtains substantial portions of its supply of natural gas directly from United Gas Pipe Line Company and from United Gas Pipe Line Company through purchases from Texas Gas Transmission Corporation. Petitioner states that the rates and charges to be demanded and received by United Gas Pipe Line Company are in issue in this proceeding, and that the same may be unjust, unreasonable, unduly discriminatory and preferential and may place an undue burden upon Petitioner. Therefore, Petitioner has a substantial interest in the matters under consideration in this proceeding for any action taken by this Commission with respect to the rates charged by United Gas Pipe Line Company may directly and adversely affect this Petitioner.

### 2429

6. Your Petitioner is not adequately represented by existing parties in the proceeding and may be bound or adversely affected by the Commission's action hereunder.

7. Your Petitioner is an interested party in the aforesaid proceeding within the meaning of Section 15(a) of the Natural Gas Act (15 USC Sec. 717n), and its intervention and participation in such proceeding will be in the public interest.

8. Your Petitioner further respectfully reserves the right to supply additional information by way of amendment to this Petition.

(2429)

WHEREFORE, it is prayed that your Honorable Commission authorize the intervention of the Petitioner in the above-entitled proceeding.

2433

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

In the Matter of  
UNITED GAS PIPE LINE COMPANY

Docket No. G-9547

December 1, 1955

**Notice Scheduling Hearing**

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 4, 5, and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on February 6, 1956, at 10:00 a.m. (EST), in a Hearing Room of the Federal Power Commission, 441 G Street, N.W., Washington, D. C., concerning the lawfulness of the rates and charges contained in United Gas Pipe Line Company's FPC Gas Tariff, and the changes proposed in its filing of September 30, 1955, part of which filing was suspended by order of the Commission issued October 26, 1955.

Protests or petitions to intervene shall be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before January 16, 1956.

LEON M. FUQUAY  
Secretary



2435

BEFORE THE FEDERAL POWER COMMISSION

In the Matter of  
UNITED GAS PIPE LINE COMPANY

Docket No. G-9547

**Petition to Intervene of Texas Gas Transmission Corporation**

Comes now Texas Gas Transmission Corporation (hereinafter referred to as "Texas Gas" or "Petitioner") and, pursuant to Section 15(a) of the Natural Gas Act and Section 1.8 of this Commission's Rules of Practice and Procedure, requests permission to intervene in the above-entitled docket. In support of this Petition, Texas Gas avers as follows:

**I.**

Texas Gas is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 416 West Third Street, Owensboro, Kentucky. Petitioner is a natural gas company engaged in the business of purchasing, transporting and selling natural gas in interstate commerce under authorizations granted by the Federal Power Commission. The facilities operated by Petitioner are located in the States of Texas, Louisiana, Arkansas, Mississippi,

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Tennessee, Kentucky, Indiana, Illinois and Ohio.

**II.**

The names, titles and post office addresses of the persons to whom correspondence and communications in regard to this Petition are to be addressed are:

(2436)

W. M. Elmer, Vice President  
Texas Gas Transmission Corporation  
416 West Third Street  
Owensboro, Kentucky

and

Christopher T. Boland, Esquire  
Gallagher, Connor and Boland  
821 Fifteenth Street, N. W.  
Washington 5, D. C.

### III.

On September 30, 1955, United Gas Pipe Line Company (United) filed with the Commission proposed revised tariff sheets to its FPC Gas Tariff, whereby United proposes a general rate increase affecting all of its sales for resale subject to the jurisdiction of the Commission. The estimated total amount of such increase is \$9,978,000.

By order issued October 26, 1955, the Commission suspended the proposed rates of United and deferred the use thereof until April 1, 1956. By notice of December 1, 1955, a hearing concerning the lawfulness of such proposed rates of United was scheduled for February 6, 1956.

2437

### IV.

Texas Gas is presently purchasing from United, under United's Rate Schedules PL-C and PL-MF, substantial volumes of natural gas for resale to the customers of Texas Gas. Based upon the estimates contained in United's filing in the instant docket, the increase to Texas Gas resulting from the proposed changes in rates would amount to approximately \$1,134,000. Therefore, Petitioner has a direct and substantial interest in the subject

matter of the hearings scheduled to commence on February 6, 1956.

### V.

It is clear from all of the foregoing that the rights and interests of Petitioner, under the Natural Gas Act, as well as those of its customers and the public it serves, may be adversely affected by the outcome of these proceedings; that it has a direct and substantial interest in the subject matter of any hearings to be held in the above-entitled matter; and that it is in the public interest that Petitioner should be permitted to become a party thereto.

### VI.

If Petitioner is not permitted to intervene, its interests will not be adequately represented in these proceedings by any other party and Petitioner may, therefore, unless permitted to intervene and participate fully, be adversely affected, or bound by whatever

### 2438

action may be taken by the Commission in these proceedings.

WHEREFORE, it is respectfully requested that the Commission permit Texas Gas to intervene as a party in the above-entitled docket, including the right to appear and be represented by counsel, cross-examine witnesses, introduce evidence and be heard in brief and oral argument, if any.

Respectfully submitted,

TEXAS GAS TRANSMISSION CORPORATION

By THOMAS F. RYAN, JR.

Thomas F. Ryan, Jr.

*Its Attorney*

Dated: December 29, 1955.



(2439)

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CITY OF WASHINGTON }  
DISTRICT OF COLUMBIA } ss:

THOMAS F. RYAN, JR., being first duly sworn, deposes and says: that he is attorney for the Petitioner, Texas Gas Transmission Corporation; that he has read the foregoing "Petition to Intervene" and that the statements therein contained are true to the best of his knowledge and belief; and that he is authorized to file the same with the Federal Power Commission.

THOMAS F. RYAN, JR.  
Thomas F. Ryan, Jr.

Subscribed and Sworn To before me this 29th day of December, 1955.

MARGARET FOX PAYNE  
Notary Public

(Seal)

My Commission Expires April 14, 1960.

2440

### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing "Petition to Intervene of Texas Gas Transmission Corporation" by mailing a copy thereof properly addressed to the following named persons:

Wilbert O. Crain, Esquire  
United Gas Pipe Line Company  
1525 Fairfield Avenue  
Shreveport, Louisiana  
Ernest Willson  
Attorney Examiner  
Alabama Public Service Commission  
P. O. Box 991  
Montgomery, Alabama

Kent H. Brown, Counsel  
New York Public Service Commission  
55 Elk Street  
Albany, New York

Harold Seligman  
Acting General Counsel  
Tennessee Public Service Commission  
Cordell Hull Building  
Nashville, Tennessee

A. O. Randall, Secretary  
Georgia Public Service Commission  
Atlantic National Building  
50 Whitehall Street, S. W.  
Atlanta, Georgia

Dated at Washington, D. C., this 29th day of December,  
1955.

THOMAS F. RYAN, JR.

2441

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chair-  
man; Claude L. Draper, Seaborn L. Digby, Frederick  
Stueck and William R. Connole.

Docket Nos. G-1142, G-2019, et al. and G-9547

100-2 FORMAL

In the Matters of  
UNITED GAS PIPE LINE COMPANY

Order Allowing Tariff Sheets to Take Effect

Adopted: January 5, 1956

Issued: January 6, 1956

By order issued November 8, 1955, in Docket Nos.  
G-1142, G-2019, et al., the Commission modified and

(2441)

affirmed as modified the initial decision of the Presiding Examiner in these matters requiring United Gas Pipe Line Company (United), within 20 days from the issuance of the order, to make an appropriate filing which would eliminate Rate Schedule PL-2 and Rate Schedule PL-3 of its FPC Gas Tariff, Original Volume No. 1, applicable to the delivery and sale of natural gas in interstate commerce by United to Mississippi River Fuel Corporation (Mississippi) for resale, and which would apply to Mississippi a single rate schedule which would be just, reasonable, not unduly discriminatory or preferential.

In response to such requirement, United filed on November 16, 1955, a letter calling to the attention of the Commission the filing made by it on September 30, 1955, which, in addition to proposing an increase in certain rates for sales of natural gas subject to the jurisdiction of the Commission, included cancellation notices which would eliminate Rate Schedule PL-2 and PL-3 and would substitute therefor Rate Schedule PL-C which would then cover all pipe line sales in United's Central Rate Zone, including all sales to Mississippi. The September 30, 1955 filing was suspended by order of the Commission issued October 26, 1955, in Docket No. G-9547 until April 1, 1956, and until such further time as such tariff might be made effective in the manner prescribed by the Natural Gas Act.

Further, United's letter states that with respect to sales to Mississippi there was included in the aforesaid filing in Docket No. G-9547 revised title sheet to United's FPC Gas Tariff, First Revised Volume No. 1, together with First Revised Sheets Nos. 54 and 57 to United's FPC Gas Tariff, Original Volume No. 1, under which notices were given that effective November 1, 1955, or such other date as may be prescribed by the Commission, United's Rate Schedules PL-2 and PL-3 are to be cancelled and



from and after the effective date of such cancellation, sales thereafter made to Mississippi will be billed under Rate Schedule PL-C, as set forth in the tariff, and which is the presently effective rate for sales to other pipe-line companies in United's Central Rate Zone. United further called the attention of the Commission to First Revised Sheet No. 99 in United's FPC Gas Tariff, First Revised Volume No. 1, entitled "Index of Maximum Daily Quantities of Pipe Line Companies".

### 2442

United states that the "foregoing steps constitute full compliance" with the Commission's order issued November 8, 1955, and when the Commission issues appropriate authorization making the above described sheets effective, United's Rate Schedule PL-C will thereupon become applicable to all pipe line sales by United in its Central Rate Zone, including United's sales to Mississippi.

It appears that if the foregoing tariff sheets, are made effective Rate Schedule PL-2 and PL-3 of United's FPC Gas Tariff, Original Volume No. 1, will be eliminated thus making applicable to Mississippi a single rate schedule which would be just, reasonable and not unduly discriminatory or preferential, all in satisfactory compliance with the requirement of November 8, 1955, order in Docket Nos. G-1142, G-2019, et al.

Upon consideration of the aforesaid November 8, 1955, order, United's letter filed November 16, 1955, in response thereto, United's filing of September 30, 1955, and the order of suspension issued October 26, 1955, in Docket No. G-9547, the Commission orders:

(A) The revised Title Sheet and First Revised Sheet No. 99 to United Gas Pipe Line Company's FPC Gas Tariff, First Revised Volume No. 1, and First Revised

(2442)

Sheets Nos. 54 and 57 to United Gas Pipe Line Company FPC Gas Tariff Original Volume No. 1 be and they are hereby allowed to take effect as of November 8, 1955, all in satisfactory compliance with the requirement of the Commission's order issued November 8, 1955, in the proceeding in Docket Nos. G-1142, G-2019, et al.

(B) Except to the extent modified herein, the order of the Commission issued October 26, 1955, in Docket No. G-9547 shall remain and continue in full force and effect subject to further order or orders of the Commission.

(C) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending, or hereafter instituted, by or against United Gas Pipe Line Company.

By the Commission,

LEON M. FUQUAY  
Leon M. Fuquay,  
*Secretary.*

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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

In the Matter of

UNITED GAS PIPE LINE COMPANY

Docket No. G-9547

Order Permitting Intervention

Adopted: January 25, 1956. Issued: January 31, 1956

Notices of intervention and petitions seeking leave to intervene were filed as follows:

Petitioner	Date Filed
Alabama Public Service Commission	November 7, 1955
Georgia Public Service Commission	December 3, 1955
Public Service Commission of the State of New York	November 16, 1955
Tennessee Public Service Commission	November 22, 1955
The East Ohio Gas Company	
The Peoples Natural Gas Company	January 16, 1956
New York State Natural Gas Corporation	
Equitable Gas Company	December 28, 1955
City of Hattiesburg, Mississippi	January 13, 1956
City of Jackson, Mississippi	January 13, 1956
Memphis Light, Gas & Water Division	
City of Memphis, Tennessee	November 7, 1955
City of Memphis, Tennessee	November 9, 1955
Mississippi River Fuel Corporation	January 6, 1956
Mississippi Valley Gas Company	November 29, 1955
Mobile Gas Service Corporation	October 10, 1955
Philadelphia Electric Company	December 20, 1955
Public Service Electric and Gas Company	November 2, 1955
Southern Natural Gas Company	November 3, 1955
Texas Eastern Transmission Corporation	November 8, 1955
Texas Gas Transmission Corporation	December 29, 1955
Tyler Gas Service Company	January 16, 1956
City of Tyler, Texas	January 16, 1956
United Gas Improvement Company	January 13, 1956
Willmut Gas & Oil Company	January 16, 1956



United Gas Pipe Line Company filed motions to dismiss and answer to several of the above petitions to intervene, alleging that the participation of such intervenors would not be in the public interest. We conclude otherwise.

**The Commission finds:**

The participation of the above-named petitioners in this proceeding may be in the public interest.

**The Commission orders:**

The above-named petitioners be and they hereby are permitted to become intervenors in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in such petitions for leave to intervene: and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

LEON M. FUQUAY  
Secretary.

2485

Received March 22, 1956

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL POWER COMMISSION

100-2 FORMAL

. . . . .  
Motion to Reject, Cancel, and Dismiss Rate Filings Insofar as They Purport to Increase the Rates of Mississippi Valley Gas Company, Texas Gas Transmission Corporation and Southern Natural Gas Company, to Prohibit Increased Rates From Becoming Effective, and to Require Refund of Purported Increased Rates for Industrial Use

Comes now Mississippi Valley Gas Company, an Intervenor in the above-entitled proceedings, and moves the Federal Power Commission to reject, cancel, and dismiss the rate filings made under Section 4(d) by United Gas Pipe Line Company (United) on September 30, 1955 to the extent that United by such filings purported to increase the rates to Mississippi Valley Gas Company, Texas Gas Transmission Corporation and Southern Natural Gas Company; to prohibit United from placing the increased rates in effect on April 1, 1956 purportedly pursuant to the provisions of Section 4(e) of the Natural Gas Act; to cancel the rate schedule purporting to increase Mississippi Valley Gas Company's rates, effective November 1, 1955, for the purchases of gas for resale for industrial use only; and to require United to refund to Mississippi,

2486

together with interest, all amounts exacted since November 1, 1955 under said IND rate schedule which exceed the amounts United would have collected under the rates in effect prior to November 1, 1955, namely, Rate

**(2486)**

Schedule IND-J, Original Sheets 18, 19 and 20. In support of its motion Mississippi Valley Gas Company respectfully shows the following:

1. Mississippi Valley Gas Company (Mississippi) presently obtains substantial portions of its supply of natural gas directly by purchase from United and indirectly from United by purchases from Texas Gas and Southern which purchase natural gas from United for supply to Mississippi and other customers.

2. Mississippi makes its direct purchases of natural gas from United under three service agreements dated March 25, 1955. One of the service agreements, executed March 25, 1955, effective May 1, 1955, and expiring January 1, 1975, provide for the purchase of natural gas for Bolton, Edwards and Raymond, Mississippi, at the rates set forth in United's Rate Schedule G-J. A second service agreement, executed, effective, and expiring on the same dates as aforesaid, provides for the purchase of natural gas for Jackson, Mississippi and environs at rates set forth in United's Rate Schedule DG-J. Under the third service agreement, executed and effective at the aforesaid dates but expiring August 1, 1962, Mississippi purchases natural gas for resale for industrial use in Jackson, Mississippi and environs at

**2487**

rates set forth in United's Rate Schedule IND-J.

3. Texas Gas purchases natural gas from United under two service agreements. One of them, executed April 16, 1945, effective December 10, 1945, and terminating October 31, 1960, provides for the purchase of natural gas at rates set forth in United's Rate Schedule PL-MF. The other service agreement, executed August 11, 1952, effective August 15, 1953 and expiring September 1, 1978,



provides for the sale of natural gas to Texas Gas at rates set forth in United's Rate Schedule PL-C.

4. United sells natural gas to Southern under a service agreement executed September 30, 1952, effective April 1, 1953 and expiring May 1, 1973, at rates set forth in United's Rate Schedule PL-J. United also sells natural gas to Southern under a service agreement executed May 7, 1951, effective May 27, 1952 and terminating October 31, 1965, at rates set forth in United's Rate Schedule PL-C.

5. On September 30, 1955, United purported to change the rates at which United had contracted to sell natural gas to Mississippi, Texas Gas and Southern under the service agreements described in paragraphs 2, 3 and 4 hereof, by a unilateral filing, under Section 4(d) of the Natural Gas Act, of rate changes to be effective November 1, 1955.

6. By order issued October 26, 1955, the Federal Power Commission suspended the purported rate changes and deferred the use of

### 2488

the increased rates until April 1, 1956, and embarked on an investigation of their lawfulness. By reason of the provisions of Section 4(e), however, the Commission did not suspend First Revised Sheets Nos. 18, 19 and 20 whereby United purported to increase the rates for sales of natural gas for resale under United's Rate Schedule IND-J and since November 1, 1955 Mississippi has been required to pay the increased rates provided by said Revised Sheets.

7. The rate schedules in the tariff filed by United are not self-executing, but are made effective as to particular purchasers only upon the execution of a contract incorporating the applicable rate schedule by reference. The

**(2488)**

contractual nature of the rates is emphasized by the "Preliminary Statement" in United's Tariff which states, in pertinent part:

"The sale of natural gas is undertaken by the Company only under a Service Agreement with purchasers acceptable to the Company after consideration of its commitments to others, supplies of natural gas, delivery capacity and other factors deemed pertinent by the Company.

"This FPC Gas Tariff is filed in compliance with Part 154, Sub-Chapter E, Chapter 1, Title 18, of the Code of Federal Regulations, as promulgated by order of the Federal Power Commission in Docket No. R-107."

8. The contractual nature of the rates is further emphasized by the provisions of each rate schedule that natural gas is available under the schedule only "when Buyer has executed with seller a Service Agreement for purchase of natural gas.

**2489**

9. In accordance with the foregoing Preliminary Statement and rate schedule provisions, Mississippi, Texas Gas and Southern have each entered into contracts with United which contain the following identical provision:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedules (here follows the designation of the schedule, such as PL-C, PL-J, as the case may be) or any effective superseding rate schedules, on file with the Federal Power Commission.  
• • •"

By this provision United and Mississippi, Texas Gas and Southern have agreed only to pay whatever rate is made lawfully effective in the manner required under the Natural Gas Act to effect a change in a contract rate.

10. In *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, — U. S. —, decided February 27, 1956, the United States Supreme Court has held that "the Natural Gas Act does not empower natural gas companies unilaterally to change their contracts \* \* \*."

11. Under that decision it is made clear that contract rates may be changed only by mutual agreement between the seller and buyer and by the Commission, after hearing under Section 5(a), in which latter event the new rates are effective only prospectively, i. e.—from and after the effective date of the Commission's order.

12. Since there has been no mutual agreement between United and Mississippi, Texas Gas and Southern for the changes in the rates

### 2490

that were filed on September 30, 1955, the filings are nullity.

13. United's reference to Docket No. R-107 in the provisions of United's Tariff quoted in paragraph 7 hereof, is a reference to Order No. 144 whereby the Commission prescribed the tariff and service agreement form. United's reference thereto underscores the fact that notwithstanding the adoption of the tariff and service agreement form the contractual rights of the parties remained inviolate and the contractual nature of the rate continued.

This analysis is enforced by the decision in *United Gas Pipe Line Company v. Federal Power Commission*, 181 F. 1 796. In that case United petitioned to review the Commission's Order No. 144 whereby the present practice of tariffs and service agreements was initiated. United challenged the legality of the order on the ground that it undertook to change contract rights without the prerequisite notice and opportunity for hearing required by



(2490)

Section 5(a) of the Natural Gas Act. The Commission represented to the Court of Appeals for the District of Columbia Circuit that it "interprets Order No. 144 as not authorizing the making of any change in an effective rate, charge, or contract provision, without compliance with the Natural Gas Act, as amended" (181 F. 2d 799, note 6). On this representation the Court held that Section 5(a) was inapplicable and dismissed the review proceedings as not involving an order which was subject to review under Section 19(b) of the Act. In this connection it is noted that the Commission's representation to the Court was in keeping with the provisions of Order No. 144.

2491

WHEREFORE, Mississippi Valley Gas Company prays that the Commission (1) take notice of its rate files containing the original contracts, rate schedules and tariffs and all revisions thereto to the extent that they are not already included in these proceedings; and (2) enter an order rejecting, cancelling and dismissing the unilateral rate filings, including First Revised Sheets Nos. 18, 19 and 20, to the extent that they purport to increase rates to Mississippi, Texas Gas and Southern, prohibiting United from placing any of said unilateral rate increases in effect on April 1, 1956, and requiring United to refund to Mississippi, together with interest, all amounts collected since November 1, 1955 which are in excess of the amounts United would have charged and collected under its IND-J rate schedule, Original Sheets 18, 19 and 20.

• • • • •

2498

Docketed March 28, 1956

100-2 FORMAL

**Answer of United Gas Pipe Line Company to Motion of Mississippi Valley Gas Company to Dismiss "Rate Filings" Applicable to Mississippi Valley Gas Company, Texas Gas Transmission Corporation and Southern Natural Gas Company, to Prohibit Increased Rates From Becoming Effective and to Require Refund of Purported Increased Rates for Industrial Use**

Now comes United Gas Pipe Line Company (United) and files herewith its answer to the motion of Mississippi Valley Gas Company (Mississippi Valley) an Intervenor for answer thereto shows:

# I

United says that said motion insofar as it seeks dismissal of notice of change of tariff rates filed under Section 4 (d) of the Natural Gas Act (Act) as to Texas Gas Transmission Corporation (Texas Gas) and Southern Natural Gas Company (Southern Natural) should be dismissed:

(a) Because no authority is shown either from Texas Gas or Southern Natural to seek such relief; whereas they are each parties on the record of this docket and have made their appearances in said docket by their own attorneys, other than the attorney for Mississippi Valley; and

2499

(b) Because Mississippi Valley is neither a party to, nor in privity with, any arrangement, agreement, contract or service agreement with respect to the sale of natural gas between United and Texas Gas or between United and Southern Natural and therefore being a stranger to

(2499)

said service agreements are without standing to seek or enforce any action with respect thereto.

Wherefore United moves that said motion insofar as it is applicable to and seeks relief in favor of Texas Gas and Southern Natural be in all things dismissed.

## II

Subject to the foregoing motion to dismiss, and without waiving the same, but still insisting thereon, United answers such motion of Mississippi Valley as follows:

(1) United admits Mississippi Valley purchases some of its gas requirements from United. It admits that it sells natural gas to Texas Gas and Southern Natural pursuant to terms and conditions of service contained in applicable service agreements and at rates contained in tariffs on file with the Federal Power Commission; but is without knowledge or information on whether any part of such natural gas is in turn sold or delivered by either Texas Gas or Southern Natural to Mississippi Valley, and so denies the same.

(2) It admits that it sells natural gas to Mississippi Valley under service agreements as set out in Paragraph 2 of said motion.

## 2500

(3) Sales and deliveries of natural gas to Texas Gas are made as follows: United had a contract with Texas Gas dated April 16, 1945 covering sale of gas in the Monroe Field in Louisiana. Upon filing its conversion tariff at Docket G-2019 on or about July 3, 1952 United filed a statement pursuant to Section 154.85 of the rules and regulations of the Federal Power Commission listing, as required, those portions of said contract dated April 16, 1945, as amended and supplemented, which would be re-



tained as an executed service agreement. Said converted service agreement was made applicable to a tariff rate schedule filed with the conversion tariff known as PL-3. Upon the settlement of Docket G-2019 and other dockets, hereafter mentioned, said contract converted to a service agreement as required by Section 154.85 of the Commission's rules and regulations was then applicable to a tariff rate schedule known as PL-MF which superseded Tariff Rate Schedule PL-3 and said service continues to be made hereunder and at rates prescribed in the Tariff Rate Schedule PL-MF. It also sells natural gas to Texas Gas under a service agreement dated August 11, 1952 which originally provided for tariff rates in accordance with the Schedule PL-4. By virtue of the provisions of Article IV in said service agreement and particularly that part reading:

" \* \* \* or any effective superseding rate schedules, on file with the Federal Power Commission"

the rates of Rate Schedule PL-4 were superseded by the rates provided in Rate Schedule PL-C which is the rate schedule alleged in Paragraph 3 of said motion.

(4) United does not sell and deliver natural gas to Southern Natural under the terms and conditions of service contained in service agreements recited in Paragraph 4 of said motion but does sell and deliver under the

## 2501

Following two service agreements: one dated November 1, 1955 effective November 1, 1955 by order of the Commission waiving the thirty-day period of Section 4 (d) of the Act, at rates set forth in Rate Schedule PL-J; the other dated November 1, 1955 effective December 15, 1955 providing for rates as set out in Rate Schedule PL-C.

**(2501)**

(5) It denies the allegations of Paragraph 5 of said motion.

(6) It admits the allegations of Paragraph 6. In addition to the matters set out therein the Commission order of October 26, 1955 also instituted a review of the propriety and lawfulness of the noticed change of rates for sales of natural gas for resale pursuant to First Revised Sheets Nos. 18, 19 and 20 referred to in Paragraph 6 of said motion, which review has not yet been concluded.

(7) Answering Paragraphs 7 and 8: United denies that the rate schedules in the tariff are not self-executing. United does not offer to sell and deliver natural gas at the rates specified in any tariff pending or superseded by change by a notice filed pursuant to Section 4 (d) of the Act to all or any person or persons willing to pay such tariff specified rates; but only to those so offering, accepted by it, who thereupon are willing to execute a service agreement specifying the terms and conditions of service required by the governing rules and regulations of the Commission and only when such sale and service is approved and authorized by the Commission under the provisions of the Act. The form of such service agreements are specified in the tariff on file with the Commission and are prepared pursuant to the requirements of the Commission's rules and regulations. Thus, the FPC Gas Tariff of

**2502**

United on file with the Commission and the terms and conditions of the service agreements specified therein, (including the forms of service agreements by which service is rendered to Mississippi Valley), were prepared and filed as stated in the "Preliminary Statement", " \* \* \* in compliance with Part 154, Sub-chapter E,

Chapter I, Title 18, of the Code of Federal Regulations, as promulgated by order of the Federal Power Commission in Docket No. R-107". Pursuant to such rules and regulations, the tariff and form of service agreements were approved by the Commission for filing and use.

(8) Answering Paragraph 9, United denies said paragraph as written.

Pursuant to Paragraph II (7) above, Mississippi Valley, Texas Gas and Southern Natural each executed service agreements with United which were approved and permitted to be filed by the Commission. These service agreements provided for rates and changes in rates substantially as follows:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule (here is inserted the applicable tariff description), or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof".

It was and is the intent and meaning of such language, and was so understood by the parties, that such provision contemplated freedom and right by United as Seller to file with the Federal Power Commission, pursuant to Section 4 (d) of the Act, notice of change in rates where change was reasonably required to make rates just and reasonable and preserve fully the proper performance of its duties and service as a natural gas company under the Act, with

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consequent freedom and right in Mississippi Valley, Texas Gas, Southern Natural and all others similarly situated



(2503)

to oppose and contest both the propriety and lawfulness of the noticed change in rates. Such language likewise gives the Purchaser free access to the Commission to seek a change in tariff rates claimed to be unjust or unreasonable with the result that a change would supersede when made effective pursuant to Commission order. Thus, there was mutual understanding and agreement that effective rates in a pending tariff were subject to notice of change filed with the Commission or to review upon complaint filed with the Commission followed by full right to oppose and contest such change or review with the effective tariff rates superseded by such change in tariff rates as became effective pursuant to Commission review and determination of the contest, if any, of the propriety and lawfulness of the noticed change or of the complaint filed against pending tariff rates.

(9) In Paragraphs 10, 11 and 12, Mississippi Valley seeks refuge and support in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, — U. S. —, decided by the United States Supreme Court on February 27, 1956, but that case is inapposite and does not assist Mississippi Valley.

(a) *Mobile* involved a common-law contract for stated firm rates for a stated term with no provision for change; whereas here Mississippi Valley has a service agreement drawn under the requirements of the Commission's rules and regulations promulgated in Docket R-107 expressly contemplating and providing for change in rates.

(b) The holding of the Supreme Court that a Mobile-type common-law contract rate for a fixed time with no provision for change could not be

2504

changed unilaterally does not forbid a superseding change in a tariff rate expressly contemplated upon a

filing with the Federal Power Commission. In *Mobile*, the contract for firm rates for the full contract term with no provision for change cut off access to the Commission. Here there is a service agreement for a stated time but which provides for changing rates for which both seller and purchaser are expressly given resort to the Commission. The service agreement, permitting change instituted by either purchaser or seller by resort to a filing with the Commission, creates mutual rights, and exercise thereof is not and cannot be "unilateral".

(c) If the tariff rates, which the service agreements identify as those to which the terms and conditions of service are applicable, can be changed only by "mutual agreement", which United denies, then the language providing for supersession by a filing with and resort to the Commission constitutes "mutual agreement".

(10) The circumstances surrounding the parties leading up to the execution of the service agreements with Mississippi Valley support and confirm the meaning, intent and analysis above set out:

In the summer of 1954 there were pending before the Commission five rate proceedings involving some or all of United's rates. Docket G-1142 was a Section 5(a) proceeding instituted in 1948 on the Commission's own motion involving all of United's rates. Docket G-2019 was a hearing ordered upon United's filing under Section 4 (d) noticing change by increase in rates to certain pipeline companies. Docket G-2074 was a hearing ordered upon United's filing under Section 4 (d) noticing change by increase in rates in the northwest Mississippi area, not physically integrated with United's main pipeline

### 2505

system. Docket G-2210 was a hearing ordered upon United's filing under Section 4 (d) noticing change by

(2505)

increase in city gate or town border rates. Docket G-2220 was a hearing ordered upon United's filing with respect to Willmut Oil and Gas Company noticing under Section 4 (d) change by increase of rates.

On July 3, 1952, as a part of the filing of Docket G-2019, United filed its conversion tariff which, like the present tariff, provided for a form of service agreement pursuant to the requirements of the rules and regulations promulgated in Docket R-107 as mentioned in the "Preliminary Statement" to United's tariff. Thereupon Texas Gas executed its service agreement dated August 11, 1952, being the service agreement mentioned in Paragraph 3 of Mississippi Valley's motion and which was applicable to Rate Schedule PL-4. Such service agreement contained provisions for change identical with that quoted in Paragraph II-(8) above. On January 24, 1955, pursuant to Opinion and Order No. 277 of the Commission United filed its FPC Gas Tariff First Revised Volume No. 1, which contained the Original Sheets 21-24 both inclusive, Rate Schedule PL-C, on Original Sheet 22 of which it is provided in Paragraph 4 of said Rate Schedule substantially as follows:

"The contract year under this rate schedule shall be a period of 12 consecutive months beginning on the following date or any anniversary thereof:

. . . .

(b) For service previously rendered under superseded Rate Schedule PL-4, September 1"

On Original Sheet 101 of said FPC Gas Tariff First Revised Volume 1 in the Index of Purchasers the same shows that Texas Gas purchases under Rate Schedule PL-C under the service agreement as otherwise described by dates in Paragraph 3.



2506

of Mississippi Valley's motion. Thus by virtue of the provisions in said service agreement between United and Texas Gas contained in Article IV thereof:

"All gas delivered hereunder shall be paid for under . . . , (or) any effective superseding rate schedules, on file with the Federal Power Commission"

Rate Schedule PL-4 was superseded by Rate Schedule PL-C admitted by Mississippi Valley in Paragraph 3 of its motion to be the applicable tariff rates in the service agreement with Texas Gas.

It was generally considered and accepted, United included, that rates provided in a contract were subject to change by a filing under Section 4 (d). United's belief and conviction that such was a correct interpretation of the Act was well known.

After Docket G-2210 was filed, Mobile Gas Service Corporation filed at Docket G-2227 a petition asking the Commission to dismiss the filing in Docket G-2210 only insofar as the change noticed was applicable to the rate for industrial resale to Ideal Cement Company claiming a contract for ten years for firm rates cut off access to the Commission and that such contract could not be changed. By order dated December 7, 1953, the Commission denied Mobile's application and dismissed its petition. Mobile's appeal gave rise to the *Mobile* case on which Mississippi Valley now seeks to rely.

On December 29, 1953, the United States District Court for the Eastern District of Texas handed down its Memorandum Decision in the case of *Tyler Gas Service Company vs. United Gas Pipe Line Company*, CA 1662, denying injunction sought by Tyler Gas and holding that the contract between Tyler Gas and United had been super-

**(2506)**

seded by the conversion tariff filed at Docket G-2019 as above

**2507**

described, and further holding that the rates in said contract were in any event subject to change by a filing of such a change pursuant to Section 4 (d) of the Act. This decision and judgment was in all things affirmed by the United States Court of Appeals for the Fifth Circuit in an opinion reported at 217 F. 2d 73. Tyler Gas did not seek certiorari from the United States Supreme Court and such judgments and decisions became final.

On June 17, 1954, the Commission issued its Opinion No. 270 *In the Matter of Pacific Gas and Electric Company*, Docket E-6482, in which the rationale of its order in Docket G-2227 was applied, the conclusion reached being that an ex parte filing under the filed rate procedure of Section 205 (d) of the Federal Power Act, comparable to Section 4 (d) of the Natural Gas Act, was effective to change a contract providing for a firm rate for a firm period.

In August 1954 all parties to Dockets G-1142, G-2019, G-2074, G-2210 and G-2220 met in conference with the Staff of the Commission from which a settlement of such dockets and the rates involved was agreed subject to approval by the Commission by Mississippi Valley and all parties except Mobile Gas Service Corporation solely as to the industrial resale rate, Tyler Gas Service Company and Mississippi River Fuel Corporation. Mobile as to the industrial resale rate relied on its appeal then pending from Docket G-2227; Tyler Gas Service Company reserved its right upon its appeal to United States Court of Appeals for the Fifth Circuit then pending; Mississippi River Fuel Corporation rejected the settlement. Submission and argument to the Commission was ordered for September 30, 1954.

Before that date and to wit, on September 7, 1954, the United States Court of Appeals for the Third Circuit reversed the Commission's Order in the *Mobile* case.

After the argument the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court in the *Tyler* case in a conclusion to

### 2508

the contrary of that reached by the Third Circuit in *Mobile's* case.

On October 26, 1954, the Commission issued its Opinion No. 277, approving the settlement reached at Dockets G-1142, et al, and ordering United to file a revised tariff embodying the settlement rates.

The forms of service agreements in such tariff contained the identical language quoted in Paragraph II (8) above which, as noted, is identical with that in the service agreement executed by Texas Gas. Such forms of service agreement in the provisions governing tariff rate change carried forward United's clear position and representation of the intended effect for change of rates by acceptances of both seller and purchaser to the Commission as exemplified by the application to the Texas Gas service agreement by which Rate Schedule PL-4 was superseded by Rate Schedule PL-C.

Thus the climate and context surrounding execution by Mississippi Valley of the service agreements dated March 25, 1955, clearly shows that the purport and intent of the provisions quoted in Paragraph II (8) above in the service agreements granting both seller and purchaser access to the Commission for changes in tariff rates permitted and contemplated change in tariff rates in terms of noticed change by seller by filing to the Commission, which change would supersede pending tariff rates when



(2508)

effective pursuant to Commission order with reciprocal right in the purchaser to seek a Commission order upon complaint requiring a filing to change tariff rates to conform to the order which the Commission might enter. The Purchaser was free to oppose and contest any noticed change; the Seller to resist any reduction sought. The provision was offered and understood as drawn in the gloss of United's contentions and understanding in the *Mobile* and *Tyler* cases. Neither Mississippi Valley or any other party participating in the settlement disposition of Docket G-1142, et al,

2508

objected or sought language to conform to the *Mobile* position, though the identity of *Mobile Gas Service Company's* contentions were well known to and discussed in the conferences leading to the settlement of such dockets. These considerations affirm and support the meaning and intent of the provisions governing change in tariff rates as set out herein above.

(11) Paragraph 13 is denied. The reference to Docket R-107 in the "Preliminary Statement" contained in United's FPC Gas Tariff First Revised Volume No. 1 is as set out herein above. Mississippi Valley incorrectly states the holding in *United Gas Pipe Line Company vs. Federal Power Commission*, 181 F. 2d 796. The Court denied United's contention that Order 144 was an adjudicatory ex parte order impairing contract obligations which could only be entered after full hearing under Section 5 (a) by its conclusion and holding that Order 144 was rule making, not adjudicatory; and so not appealable. The Commission representation set out in Mississippi Valley's motion was accepted by the Court as showing there was no intended ex parte change in a contract but not to conclude that thereby Section 5 (a) was inapplicable.

The Court suggested that the order being rule making and not appealable, the remedy, if the impairment existed, was by plenary suit in equity.

It is to be noted that the common-law contract between Mississippi Valley and United was expressly abrogated and annulled by the parties in the service agreements involved herein by the following provisions contained in Article VIII thereof:

## 2510

### "ARTICLE VIII AGREEMENTS BEING SUPERSEDED

This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

Gas Sales Contract dated August 5, 1947, as amended.

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered thereunder by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made."

Thus the "contractual rights of parties" did not remain "inviolable" nor did "the contractual nature of the rate" contained in the abrogated common law contract "continue" as Mississippi Valley alleges.

WHEREFORE, premises considered, United prays that the Commission strike and dismiss the unauthorized effort of Mississippi Valley to secure dismissal of the Notice of Change in Tariff Rates as to Texas Gas and Southern

(2510)

Natural; and that Mississippi Valley's motion be in all things denied and for such other order as the Commission deems proper.

• • • • •

**2516**

Received March 28, 1956

**Motion to Reject, Cancel and Dismiss Rate Filings Insofar as They Purport to Increase the Rates of Texas Gas Transmission Corporation, and to Prohibit Increased Rates From Becoming Effective**

Comes now Memphis Light, Gas and Water Division and the City of Memphis (hereafter "Memphis"), Intervenor, in the above entitled proceedings, and move the Federal Power Commission to reject, cancel and dismiss the rate filings made under Section 4(d) by United Gas Pipe Line Company (hereafter "United") on September 30, 1955, to the extent that United, by such filings, purported to increase the rates to Texas Gas Transmission Corporation, and to prohibit United from placing the increased rates in effect on April 1, 1956, purportedly pursuant to the provisions of Section 4(e) of the Natural Gas Act, for the reason that said rate filings constitute an attempt unilaterally to increase rates in violation of existing rate contracts between United and Texas Gas.

**2517**

In support of its motion Memphis respectfully shows the following:

1. Memphis presently obtains all of its natural gas requirements by purchases from Texas Gas, which purchases substantial volumes of natural gas from United for supply to Memphis and other customers.
2. Texas Gas purchases natural gas from United under two contractual service agreements. Under the first of



them, executed April 16, 1945, effective December 10, 1945, and terminating October 31, 1960, United agreed to sell to Texas Gas natural gas at the rates then set forth in United's Rate Schedule PL-MF. By the second agreement executed August 11, 1952, effective from August 15, 1953 to August 15, 1978, United agreed to sell natural gas to Texas Gas at rates then set forth in United's Rate Schedule PL-C.

3. United's tariffs and executed service agreements with Texas Gas constitute rate contracts. Texas Gas may not purchase from United upon its filed rate schedule alone, but is required to enter into a contract, or "Service Agreement", which imposes substantial obligations on Texas Gas in addition to its payment for the gas it purchases, which binds Texas Gas to take certain minimum quantities of gas for the entire term of the contract and which incorporates by reference the rate schedule in effect on the date of execution. The "Preliminary Statement" in United's tariff states in pertinent part:

"The sale of natural gas is undertaken by the Company only under a Service Agreement with purchasers acceptable to the Company after consideration of its commitments to others,

### 2518

supplies of natural gas, delivery capacity and other factors deemed pertinent by the Company.

"This FPC Gas Tariff is filed in compliance with Part 154, Sub-Chapter E, Chapter 1, Title 18, of the Code of Federal Regulations, as promulgated by order of the Federal Power Commission in Docket No. R-107."

(2518)

And each rate schedule provides that natural gas is available under the schedule only "when Buyer has executed with Seller a Service Agreement for purchase of natural gas."

4. Each of the contracts entered into between Texas Gas and United contains the following identical provision:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule (here follows the designation of the Schedule, such as PL-C, PL-J, as the case may be) or any effective superseding rate schedules on file with the Federal Power Commission\*"

The quoted language, together with the express reference in United's tariff (paragraph 3, supra) to the Order of the Federal Power Commission in Docket No. R-107, underscores the fact that notwithstanding the adoption of the schedule and service agreement form of tariff, the contractual rights of the parties remained inviolate and the contractual nature of the rate continued.

This analysis of the contractual nature of United's tariff is buttressed by the decision in *United Gas Pipe Line Company v. Federal Power Commission*, 181 Fed. (2d) 795. In that case, United petitioned to review the Commission's Order No. 144, whereby the present practice of tariffs and service agreements was initiated. United challenged the legality of that Order on the ground that it undertook to change contract rights without

2519

the prerequisite notice and opportunity for hearing required by Section 5a of the Natural Gas Act. The Commission represented to the Court of Appeals for the District of Columbia that it "interprets Order No. 144 as not

authorizing the making of any change in an effective rate, charge, or contract provision, without compliance with the Natural Gas Act, as amended" (181 Fed. (2d) 799, note 6). On this representation, the Court held that Section 5(a) was inapplicable and dismissed the review proceedings as not involving an order which was subject to review under Section 19(b) of the Act. In this connection, it is noted that the Commission's representation to the Court was in keeping with the provisions of Order No. 144.

5. On September 30, 1955, United purported to change unilaterally the rates at which United had contracted to sell natural gas to Texas Gas under the service agreements described in paragraph 2 hereof, by a filing under Section 4(d) of the Natural Gas Act, of rate changes to be effective November 1, 1955.

6. By Order issued October 26, 1955, the Federal Power Commission suspended the purported rate changes and deferred the use of the increased rates until April 1, 1956, and embarked on an investigation of their lawfulness.

7. The United States Supreme Court has recently held that superseding rate schedules filed by a natural gas company with the Commission are not effective to increase a rate contained in a rate contract, where the filing is an attempt unilaterally to change the rate contract. *United Gas*

## 2520

*Pipe Line Company v. Mobile Gas Service Company*, — U.S. —, decided February 27, 1956.

8. United Gas has not in either of its service agreements with Texas Gas specified any conditions under which it reserved the right unilaterally to change the rates in existence on the date of the agreements; nevertheless, it has attempted unilaterally to change its contracts with Texas



Gas by filing new rate schedules which precipitated this proceeding.

9. Texas Gas has contracted to pay the rates in effect upon the respective dates of its two service agreement contracts "or any *effective* superseding rate schedules on file with the Federal Power Commission." Absent mutual agreement not found in this provisions, the *Mobile Gas Service Company* case, *supra*, makes clear that a superseding rate schedule can become effective only after an investigation by the Commission under Section 5(a) of the Natural Gas Act and a finding by the Commission that existing rates are so low as to conflict with the public interest. Upon such finding the Commission may then authorize the filing of a schedule increasing the rates.

10. Since there has been no such investigation or finding by the Commission, and no consent by the purchaser to an increase in rates, United's rate schedule filed September 30, 1955, was a nullity. As has now been made clear by the *Mobile Gas Service* case, the proper action of the Commission upon filing by United of its proposed rates schedule was to reject same at once, insofar as it purported to change contract rates by unilateral action.

## 2521

WHEREFORE, Memphis Light, Gas and Water Division and the City of Memphis pray that the Commission enter an order rejecting, cancelling and dismissing the unilateral rate filings to the extent that they purport to increase rates to Texas Gas, and prohibiting United from placing said unilateral rate increases in effect on April 1, 1956,

. . . . .

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Docketed March 30, 1956

100-2 FORMAL

**Answer of Southern Natural Gas Company to Motions of Mississippi Valley Gas Company and Memphis Light, Gas and Water Division and the City of Memphis**

Comes now Southern Natural Gas Company ("Southern"), an intervenor in the above-captioned proceeding, and answers the motions filed herein by Mississippi Valley Gas Company ("Mississippi Valley") and Memphis Light, Gas and Water Division and the City of Memphis ("Memphis") to reject, cancel and dismiss certain rate filings by United Gas Pipe Line Company ("United"), to prohibit certain of United's increased rates from becoming effective, and to require refund of certain increased rates for industrial use, as follows.

# I.

Southern admits that it is purchasing natural gas from United under two service agreements at the rates set forth in United's rate schedules PL-J and PL-C, that its service agreements with United contain the language quoted in paragraph 9 of Mississippi Valley's motion and paragraph 4 of Memphis' motion, that it sells natural gas

2537

to Mississippi Valley, and that on September 30, 1955 United filed increased rates with the Federal Power Commission to be effective November 1, 1955, certain of which rates were suspended by the Commission to April 1, 1956.

Southern has no information, of its own knowledge, as to the truth or falsity of the other averments of fact contained in said motions.

## II.

Southern opposes said motions on the ground that the movants wrongly construe the legal effect of United's service agreements and mistakingly assume that the law as declared in the case of *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, decided by the United States Supreme Court on February 27, 1956, requires the Commission to reject, cancel or dismiss United's rate filing of September 30, 1955.

The Mobile case holds that a natural-gas company selling gas under a rate fixed by contract cannot unilaterally change such rate by a filing under Section 4(d) of the Natural Gas Act and that, if it files changed rates purportedly under Section 4(d) in derogation of its contract obligation, the Commission is obliged to reject such filing. Therefore, the issue here is whether United and its named

## 2538

customers sell and purchase gas, respectively, under static rates fixed by contract or whether their service agreements provide for the sale and purchase of gas under published tariff rates which may be changed pursuant to Section 4(d), subject to determination by the Commission under Section 4(e) as to whether the changed rates are just and reasonable. This, of course, entails a construction of United's service agreements.

As Southern construes its service agreements with United, United reserves and Southern grants to United the right to file with the Commission under the provisions of Section 4(d) changes in the rate schedules under which Southern purchases natural gas, subject, of course, to Southern's right to oppose any such changed rates in a proceeding before the Commission in respect thereto initiated



under Sections 4(e) or 5(a) of the Act. Such was Southern's intention when it executed said service agreements.

The pertinent provision in United's form of service agreement reads as follows:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule , or any effective superseding rate schedules on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof."

### 2539

The words "or any effective superseding rate schedules on file with the Federal Power Commission" clearly connote in Southern's opinion, that its contract is to pay United rates set out in United's applicable rate schedules and that such schedules may be changed by United under the procedures established under Section 4(d), subject to supervision and review by the Commission under Sections 4(e) and 5(a). In other words, Southern's contract is to pay United the rates set out in United's filed rate schedules or such other rates as are determined by the Commission, subject to judicial review, to meet the statutory standards applicable in proceedings under Sections 4(e) and 5(a). It is too well established to require citation of authority that the construction by the parties to a contract delimit its meaning.

### III.

The language of United's service agreements must be viewed against the background of the Commission's uniform practice in administering Section 4 of the Act since

(2539)

the promulgation in 1948 of Part 154 of its General Rules and Regulations prescribing the form and content of FPC gas tariffs and provisions for the filing and the making of changes therein. Under such rules and the supervision of the Commission's Staff, most natural-gas companies which operate interstate pipelines have incorporated in their

## 2540

tariffs standard forms of service agreements containing provisions of similar import to the above-quoted provision in United's form of service agreement, and have executed service agreements with their customers in accordance with said forms. And, the uniform practice of the Commission has been to accept tariff changes filed under Section 4(d) by natural-gas companies selling gas under such service agreements. Never, until the filing of these motions, has the right of a natural-gas company selling gas under such a service agreement to file tariff changes under Section 4(d) and the right of the Commission to accept such changes, subject to further proceedings under Section 4(e), been brought into issue, although many such changes have been filed.

Because of this consistent, although tacit, construction by the Commission and the industry of identical and similar service agreement provisions as according natural-gas companies the right to file changed rate schedules pursuant to Section 4(d) of the Act, the conclusion is inescapable that the parties to all of the service agreements mentioned in the aforesaid motions intended that their agreements accord to United the right to make Section 4(d) filings. Therefore, even were there any ambiguity in the contract language (which there is not) such ambiguity must be resolved in accordance with the clearly indicated intention of the parties.

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WHEREFORE, Southern respectfully prays that the motions of Mississippi Valley and Memphis be denied.

. . . . .

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### Response of Texas Gas

Comes now Texas Gas Transmission Corporation (Texas Gas), an Intervenor in the above-entitled proceeding, and files the following statement in response to the motion of Mississippi Valley Gas Company (Mississippi) to Reject, Cancel and Dismiss Rate Filing of United Gas Pipe Line Company:

1. United Gas Pipe Line Co., in its Answer to Mississippi's Motion, states the following (Pages 5-6):

" . . . These service agreements provided for rates and changes in rates substantially as follows:

'All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule (here is inserted the applicable tariff description), or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.'

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"It was and is the intent and meaning of such language, and was so understood by the parties, that such provision contemplated freedom and right by United as Seller to file with the Federal Power Commission, pursuant to Section 4(d) of the Act, notice



of change in rates where change was reasonably required to make rates just and reasonable and preserve fully the proper performance of its duties and service as a natural gas company under the Act, with consequent freedom and right in Mississippi Valley, Texas Gas, Southern Natural and all others similarly situated to oppose and contest both the propriety and lawfulness of the noticed change in rates. Such language likewise gives the Purchaser free access to the Commission to seek a change in tariff rates claimed to be unjust or unreasonable with the result that a change would supersede when made effective pursuant to Commission order. Thus, there was mutual understanding and agreement that effective rates in a pending tariff were subject to notice of change filed with the Commission or to review upon complaint filed with the Commission followed by full right to oppose and contest such change or review with the effective tariff rates superseded by such change in tariff rates as became effective pursuant to Commission review and determination of the contest, if any, of the propriety and lawfulness of the noticed change or of the complaint filed against pending tariff rates."

2. The above statement also represents Texas Gas' understanding of such language.

Respectfully submitted

TEXAS GAS TRANSMISSION CORPORATION

By RICHARD J. CONNOR

Its Attorney

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**Response of Texas Gas**

Comes now Texas Gas Transmission Corporation (Texas Gas), an Intervenor in the above-entitled proceeding, and files the following statement in response to the motion of Memphis Light, Gas and Water Division and the City of Memphis (Memphis) to Reject, Cancel and Dismiss Rate Filing of United Gas Pipe Line Company:

1. United Gas Pipe Line Co., in its Answer to the motion of Mississippi Valley Gas Company to reject, cancel and dismiss the rate filings made under Section 4(d) by United Gas Pipe Line Company states the following (Pages 5-6):

“ . . . These service agreements provided for rates and changes in rates substantially as follows:

‘All gas delivered hereunder shall be paid for by Buyer under Seller’s Rate Schedule (here is inserted the applicable tariff description), or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof.’

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“It was and is the intent and meaning of such language, and was so understood by the parties, that such provisions contemplated freedom and right by United as Seller to file with the Federal Power Commission, pursuant to Section 4(d) of the Act, notice of change in rates where change was reasonably required to make rates just and reasonable and preserve fully the

proper performance of its duties and service as a natural gas company under the Act, with consequent freedom and right in Mississippi Valley, Texas Gas, Southern Natural and all others similarly situated to oppose and contest both the propriety and lawfulness of the noticed change in rates. Such language likewise gives the Purchaser free access to the Commission to seek a change in tariff rates claimed to be unjust or unreasonable with the result that a change would supersede when made effective pursuant to Commission order. Thus, there was mutual understanding and agreement that effective rates in a pending tariff were subject to notice of change filed with the Commission or to review upon complaint filed with the Commission followed by full right to oppose and contest such change or review with the effective tariff rates superseded by such change in tariff rates as became effective pursuant to Commission review and determination of the contest, if any, of the propriety and lawfulness of the noticed change or of the complaint filed against pending tariff rates."

2. The above statement also represents Texas Gas' understanding of such language and is adopted by Texas Gas in response to the motion of Memphis.

Respectfully submitted,

TEXAS GAS TRANSMISSION CORPORATION  
By WM. ELMER

• • • • •



2575

Received April 6, 1956

**Answer of United Gas Pipe Line Company to Motion of Memphis Light, Gas and Water Division and the City of Memphis to Reject, Cancel and Dismiss "Rate Filings" Insofar as They Purport to Increase Rates of Texas Gas Transmission Corporation and to Prohibit Increased Rates From Becoming Effective**

Now COMES United Gas Pipe Line Company (United) and files herewith its answer to the motion of Memphis Gas Light and Water Division and the City of Memphis (both hereafter referred to as "Memphis"), Intervenor, and for answer thereto shows:

## I.

United says that said motion insofar as it seeks dismissal of notice of change of tariff rates filed under Section 4(d) of the Natural Gas Act (Act) as to Texas Gas Transmission Corporation (Texas Gas) should be dismissed:

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(a) Because no authority is shown from Texas Gas to seek such relief; whereas Texas Gas is a party on the record of this Docket and has made its appearance in said Docket by its own attorneys, other than the attorneys for Memphis; and

(b) Because Memphis is neither a party to, nor in privity with, any arrangement, agreement, contract, or service agreement with respect to the sale of natural gas between United and Texas Gas and therefore being a stranger to said service agreements are without capacity or standing to seek or enforce any action with respect thereto or to maintain and assert a particular motion herein.

**(2576)**

**WHEREFORE, United moves that said motion in all things be dismissed.**

**II.**

**Subject to the foregoing motion to dismiss, and without waiving the same, but still insisting thereon, United answers such motion of Memphis as follows:**

**2577**

**(1) United understands that Memphis obtains some natural gas from Texas Gas, but has no knowledge or information that it obtains all of its requirements from Texas Gas. It admits that Texas Gas purchases natural gas from United, but has no information as to whether any part of the gas so purchased from United by Texas Gas goes to Memphis, and for want of such knowledge or information denies the same.**

**(2) Sales and deliveries of natural gas to Texas Gas are made as follows:**

**United had a contract with Texas Gas dated April 16, 1945, covering sale of gas in the Monroe Field in Louisiana. Upon filing its conversion tariff at Docket G-2019 on or about July 3, 1952, United filed a statement pursuant to Section 154.85 of the Rules and Regulations of the Federal Power Commission listing, as required, those portions of said contract dated April 16, 1945, as amended and supplemented which would be retained as an executed service agreement. Said converted service agreement was made applicable to a tariff rate schedule filed with the conversion tariff known as PL-3. Upon the settlement of Docket G-2019 and**

**2578**

**other dockets, hereafter mentioned, said contract converted to a service agreement as required by Section 154.85**

of the Commission's Rules and Regulations was then applicable to a Tariff Rate Schedule known as PL-MF which superseded Tariff Rate Schedule PL-3, and said service continues to be made thereunder and at rates prescribed in the Tariff Rate Schedule PL-MF. It also sells natural gas to Texas Gas under a service agreement dated August 11, 1952, which originally provided for tariff rates in accordance with Rate Schedule PL-4 by virtue of the provisions of Article IV in said service agreement, and particularly with that part reading:

“ . . . any effective superseding rate schedules, on file with the Federal Power Commission ”.

The rates of Rate Schedule PL-4 were superseded by the rates provided in Rate Schedule PL-C, which is the rate schedule alleged in Paragraph 2 of said motion.

(3) Answering paragraph 3, United Denies that its tariffs and executed service agreements with Texas Gas constitute “rate contracts” as the term “rate contracts” is generally understood at the law; but admits that the terms

### 2579

“tariffs”, “service agreements”, “contracts”, and “rate schedule” when used in connection with the present effective service agreements with Texas Gas have the meaning ascribed to them by the provisions of Part 154, and more particular parts 154.11, 154.12, 154.13, 154.14, and 154.21 of the Rules and Regulations issued in Subchapter “E”, Chapter 1, Title 18 of the Code of Federal Regulations as promulgated by the order of Federal Power Commission in Docket R-107.

United shows that because of the compulsion and requirements of said Rules and Regulations which have the force of statutes, that it does not and may not offer to



**(2579)**

sell and deliver natural gas at the rates specified in any tariff pending or superseded by a change by notice filed pursuant to Section 4(d) of the Act, to all or any person or persons willing to pay such tariff specified rates; but only to those so offering, accepted by it, who thereupon are willing to execute a service agreement specifying the terms and conditions of service required by the governing Rules and Regulations of the Commission, and only when such sale and service is approved and authorized by the

**2580**

Commission under the provisions of the Act. The forms of such service agreements are specified in the tariff on file with the Commission and are prepared pursuant to the requirements of the Commission's Rules and Regulations. Thus, the FPC Gas Tariff of United on file with the Commission and the terms and conditions of the service agreements specified therein (including the forms of service agreements by which service is rendered to Texas Gas), were prepared and filed as stated in the "Preliminary Statement, \* \* \* in compliance with Part 154, Subchapter E, Chapter 1, Title 18, of the Code of Federal Regulations as promulgated by order of the Federal Power Commission in Docket No. R-107." Pursuant to such Rules and Regulations the tariff and form of service agreements were approved by the Commission for filing and use.

Pursuant to the compulsion and requirements of said Rules and Regulations herein identified, most of United's schedules under the heading of "Availability" provide that:

"This rate schedule is available to any natural gas distributor [or as the case may be] any natural gas pipeline company (hereinafter called 'buyer') \* \* \*

when buyer has executed with seller a Service Agreement for the purchase of natural gas for such Billing Area Unit."

## 2581

The general terms and conditions prepared pursuant to such Rules and Regulations specify the form of service agreement, in United's FPC Gas Tariff First Revised Volume No. 1 filed on or about December 1, 1954, the forms of service agreements specified by the general terms and conditions from original sheet No. 75 to original sheet No. 98, both inclusive.

4. Answering paragraph 4, United denies said paragraph as written.

Pursuant to Paragraph II (3 above) the service agreement with Texas Gas which received approval and permission for filing by the Commission, provided for rates and changes in rates substantially as follows:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule (here is inserted the applicable tariff description), or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto, and filed with the Federal Power Commission which are by reference made a part hereof."

It was and is the intent and meaning of such language, and was so understood by the parties, that such provision contemplated freedom and right by United as Seller to file with

the Federal Power Commission, pursuant to Section 4(d) of the Act, notice of change in rates where change was reasonably required to make rates just and reasonable and preserve fully the proper performance of its duties and service as a natural gas company under the Act, with consequent freedom and right in Texas Gas and all others similarly situated to oppose and contest both the propriety and lawfulness of the noticed change in rates. Such language likewise gives the Purchaser free access to the Commission to seek a change in tariff rates claimed to be unjust or unreasonable with the result that a change would supersede when made effective pursuant to Commission order. Thus, there was mutual understanding and agreement that effective rates in a pending tariff were subject to notice of change filed with the Commission or to review upon complaint filed with the Commission followed by full right to oppose and contest such change or review with the effective tariff rates superseded by such change in tariff rates as became effective pursuant to Commission review and determination of the contest, if any, of the property and lawfulness of the noticed change or of the complaint filed against pending tariff rates.

The reference to Docket R-107 in the "Preliminary Statement" contained in United's FPC Gas Tariff First Revised Volume No. 1 is as set out hereinabove.

Memphis incorrectly states the holding in *United Gas Pipe Line Company v. Federal Power Commission*, 181 F. 2d 796. The Court denied United's contention that Order 144 was an adjudicated ex parte order governing contract obligations which could only be entered after full hearing in Section 5(a) by its conclusion and holding that Order 144 was rule making, not adjudicatory; and so not



appealable. The Commission representation set out in the motion of Memphis was accepted by the Court as showing there was no intended ex parte change in a contract but not to conclude that thereby Section 5(a) was inapplicable. The Court suggested that the order being rule making and not appealable, the remedy, if the impairment existed, was by a plenary suit in equity.

It is to be noted that the common-law contract between Texas Gas and United was expressly abrogated and annulled by the parties in the service agreements involved herein by the following provisions contained in Article VIII thereof:

## 2584

### "ARTICLE VIII

#### AGREEMENTS BEING SUPERSEDED

"This agreement supersedes, cancels and terminates, as of the effective date of the term of this Service Agreement the following existing arrangements, agreements, contracts and Service Agreements with respect to the sale of natural gas by Seller to Buyer for the purposes set forth in Article I hereof:

(a) Agreement dated April 16, 1945, between Seller and Memphis Natural Gas Company designated and known as the 'Outside Supply Agreement,' Buyer having succeeded to all the rights and obligations of Memphis Natural Gas Company; and

(b) Agreement dated April 16, 1945 between Seller and Memphis Natural Gas Company designated and known as the 'Transportation Agreement,' Buyer having succeeded to all the rights and obligations of Memphis Natural Gas Company.

Both parties shall be released from any and all obligations under said arrangements, agreements, contracts and Service Agreements except as to the obligation of Buyer to pay for all gas delivered thereunder

(2584)

by Seller prior to the effective date of the term of this Service Agreement, and for which payment has not been made."

Thus the "contractual rights of the parties" do not remain "inviolate" nor do the "contractual nature of the rights" contained in the abrogated common law contract "continue," as Memphis alleges.

5. It denies Paragraph 5 of the Motion of Memphis.

6. It admits the allegations of Paragraph 6 and says that the review of the Commission is now in course and has not been concluded.

**2585**

7. United denies Paragraphs 7, 8, 9, and 10. In such paragraphs Memphis seeks refuge and support in *United Gas Pipe Line Company v. Mobile Gas Service Corporation* .... U. S. ...., decided by the United States Supreme Court on February 27, 1956, but that case is inapposite and does not assist Memphis.

(a) *Mobile* involved a common law contract for stated firm rates for a stated term with no provision for change; whereas here the service agreement with Texas Gas drawn under the requirement of the Commission's Rules and Regulations and the applicable rate schedules in United's Tariff were each and both drawn under the requirements and pursuant to the order of the Commission's Rules and Regulations promulgated in Docket R-107 and expressly contemplates and provide for change in rates.

(b) *Mobile* was maintained by the party at interest, Mobile Gas Service Corporation, who was a party to said contract; whereas here Memphis seeks to litigate and contest a service agreement to which it is a complete stranger, being neither a party nor a privy to said service agreement.

(c) The holding of the Supreme Court that a Mobile-type common law contract rate for a fixed time with no provision

### 2586

for change could not be changed unilaterally does not forbid a superseding change in a tariff rate expressly contemplated both by the service agreement and the applicable rate schedule upon a filing with the Federal Power Commission. In *Mobile* the contract for firm rates for the full contract term with no provision for change cut off access to the Commission. Here there is a service agreement for a stated time but which provides for change in rates for which both seller and purchaser are expressly given resort to the Commission. The service agreement, permitting change instituted by either purchaser or seller by resort to a filing with the Commission, creates mutual rights, and exercise thereof is not and cannot be "unilateral".

(d) If the tariff rates, which the service agreements identify as those to which the terms and conditions of service are applicable, can be changed only by "mutual agreement", which United denies, then the language providing for supersession by a filing with a resort to the Commission constitutes "mutual agreement". *Mobile* involved a determination of procedural and substantive rights assertedly based upon the Natural Gas Act which the Court construed to determine the rates in reliance upon the Act; whereas here the

### 2587

rate change depends upon provisions in the service agreement which stipulates the right of change and access to the Commission therefor.

8. The circumstances surrounding United and Texas Gas leading up to the execution of the service agreements



**(2587)**

with Texas Gas and the acts of the parties resulting in construction of the same support and confirm the meaning, intent and analysis above set out:

In the summer of 1954, there were pending before the Commission five rate proceedings involving some or all of United's rates. Docket G-1142 was a Section 5(a) proceeding instituted in 1948 on the Commission's own motion involving all of United's rates. Docket G-2019 was a hearing ordered upon United's filing under Section 4(d) noticing change by increase in rates to certain pipe line companies. Docket G-2074 was a hearing ordered upon United's filing under Section 4(d) noticing change by increase in rates in the Northwest Mississippi area, not physically integrated with United's main pipe line system. Docket G-2210 was a hearing ordered upon United's filing under Section 4(d) noticing change by increase in city gate or town-border rates. Docket G-2220 was a hearing ordered upon United's

**2588**

filing with respect to Willmut Oil & Gas Company noticing under Section 4(d) change by increase of rates.

On July 3, 1952, as a part of the filing of Docket G-2019, United filed its conversion tariff which, like the present tariff, provided for a form of service agreement pursuant to the requirements of the Rules and Regulations promulgated in Docket R-107, as mentioned in the "Preliminary Statement" to United's tariff. Thereupon Texas Gas executed its service agreement dated August 11, 1952, being the service agreement mentioned in paragraph 2 of the motion of Memphis, and which was applicable to rate Schedule PL-4. Such service agreement contained provisions for change identical with that quoted in Paragraph II(5) above. On January 24, 1955, pursuant to

opinion and order No. 277 of the Commission United filed its FPC Gas Tariff First Revised Volume No. 1 which contained original sheets 21 to 24, both inclusive, rate schedule PL-C, on original sheet 22 of which it is provided in paragraph 4 of said Rate Schedule, substantially as follows:

"The contract year under this Rate Schedule shall be a period of twelve consecutive months beginning on the following date or any anniversary thereof:

**2589**

" \* \* \* (b) for service previously rendered under superseded Rate Schedule PL-4, September 1."

On original sheet 101 of said FPC Gas Tariff First Revised Volume 1 in the Index of Purchasers the same shows that Texas Gas purchases under Rate Schedule PL-C under the service agreement as otherwise described by dates in Paragraph 2 of the motion of Memphis. Thus by virtue of the provisions in said service agreement between United and Texas Gas contained in Article IV thereof:

"All gas delivered hereunder shall be paid for under \* \* \* [or] any effective superseding rate schedules, on file with the Federal Power Commission."

Rate Schedule PL-4 was superseded by Rate Schedule PL-C, admitted by Memphis in paragraph 2 of its motion to be the applicable tariff rates in such service agreement with Texas Gas. This is typical of the performance and construction of such provisions for change of rates provided in the service agreements practiced and recognized by United and Texas Gas, and the performance by which the rendition of service and the charge therefor has been done continuously by the parties in accordance with the matters herein set out.

## 2590

It was generally considered and accepted, United included, that rates provided in a contract were subject to change by a filing under Section 4(d). United's belief and conviction that such was a correct interpretation of the Act was well known.

After Docket G-2210 was filed, Mobile Gas Service Corporation filed at Docket G-2227 a petition asking the Commission to dismiss the filing in Docket G-2210 only insofar as the change noticed was applicable to the rate for industrial resale to Ideal Cement Company, claiming a contract for ten years for firm rates cut off access to the Commission and that such contract could not be changed. By order dated December 7, 1953, the Commission denied Mobile's application and dismissed its petition. Mobile's appeal gave rise to the *Mobile* case on which Memphis now seeks to rely.

On December 29, 1953, the United States District Court for the Eastern District of Texas handed down its memorandum decision in the case of *Tyler Gas Service Corporation vs. United Gas Pipe Line Company*, C. A. No. 1662, denying injunction sought by Tyler Gas Company, holding that the contract between United Gas and Tyler had been superseded

## 2591

by the conversion tariff filed at Docket G-2019, above described, and further holding that the rates for said contract were in any event subject to change by a filing of such a change pursuant to Section 4(d) of the Act. This decision and judgment was in all things affirmed by the United States Court of Appeal for the Fifth Circuit in an opinion reported at 217 F. 2d 73. Tyler Gas did not seek certiorari from the United States Supreme Court, and said judgments and decisions became final.



On June 17, 1954, the Commission issued its opinion No. 270, *In the Matter of Pacific Gas and Electric Company*, Docket E-6482, in which the rationale of its order in Docket G-2227 was applied, the conclusion reached being that an ex parte filing under the Filed Rate Procedure of Section 205(d) of the Federal Power Act, comparable to Section 4(d) of the Natural Gas Act, was effective to change a contract providing for a firm rate for a firm period.

In August, 1954, all parties to Dockets G-1142, G-2019, G-2074, G-2210, and G-2220, to which both Memphis and Texas Gas were parties, met in conference with the Staff of the Commission from which a settlement of said dockets came.

### 2592

The rates involved in said dockets were agreed, subject to approval by the Commission, by Texas Gas, and all parties except Mobile Gas Service Corporation solely as to the industrial resale rate, Tyler Gas Service Company and Mississippi River Fuel Corporation. Mobile, as to the industrial resale rate, relied on its appeal then pending from Docket G-2227; Tyler Gas Service Company reserved its right upon its appeal to the United States Court of Appeals for the Fifth Circuit, then pending; Mississippi River Fuel Corporation rejected the settlement. Submission and argument to the Commission was ordered for September 30, 1954.

Before that date and to-wit on September 7, 1954, the United States Court of Appeals for the Third Circuit reversed the Commission's order in the *Mobile* case. After the argument the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court in the Tyler case in a conclusion to the contrary of that reached by the Third Circuit in *Mobile's* case.

**(2592)**

On October 26, 1954, the Commission issued its Opinion No. 277 approving the settlement reached at dockets G-1142, et al, and ordering United to file a revised tariff embodying the settlement rates.

**2593**

The forms of service agreements in such tariff contained the identical language quoted in Paragraph II(5) above, which, as noted, is identical with that in the service agreement executed by Texas Gas. Such forms of service agreement in the provisions governing tariff rate change carried forward United's clear position and representation of the intended effect for change of rates by access of both seller and purchaser to the Commission as exemplified by the application to the Texas Gas Service Agreement by which rate schedule PL-4 was superseded by rate schedule PL-C.

Thus the climate and context surrounding execution by Texas Gas of the service agreements, clearly shows that the purport and intent of the provisions quoted in Paragraph II(5) above in the service agreements granting both seller and purchaser access to the Commission for changes in tariff rates permitted and contemplated change in tariff rates in terms of noticed change by Seller by filing to the Commission, which change would supersede pending tariff rates when effective pursuant to Commission order with reciprocal right in the purchaser to seek a Commission order upon complaint requiring a filing to change tariff rates to conform

**2594**

to the order which the Commission might enter. The purchaser was free to oppose and contest any noticed change; the seller to resist any reduction sought. The provision was offered and understood as drawn in the gloss of

United's contentions and understanding in the *Mobile* and *Tyler* cases.

Neither Memphis nor Texas Gas, or any other party participating in the settlement disposition of Docket G-1142 objected or sought language to conform to the *Mobile* position, though the identity of Mobile Gas Service Company's contentions were well known to and discussed in the conferences leading to the settlement of such dockets. These considerations not only affirm and support the meaning and intent of the provisions governing change in tariff rates as set out hereinabove, but disclose actions and positions of Memphis and Texas Gas conformable to such meaning and intent. Aside from the fact that Memphis being a stranger to the service agreements with Texas has no capacity to contest or to be heard contrary to either the meaning or intent of such service agreements or of the mutual understandings, constructions and actions of the parties thereto, but also demonstrates that by this motion Memphis seeks to change its legal position at a time and under circumstances which are not permissible.

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WHEREFORE, premises considered, United prays that the Commission strike and dismiss the unauthorized effort of Memphis, not being the real party at interest or having the capacity thereabout to secure dismissal of the Notice of Change in Tariff Rates to Texas Gas, and that the motion of Memphis be in all things denied, and for such other order as the Commission deems proper.



(2802)

2802

Received April 9, 1956

**Answer to Motion of United Gas Pipe Line Company to Dismiss Motion of Mississippi Valley Gas Company to Reject, Cancel and Dismiss Rate Filings in Part**

Comes now Mississippi Valley Gas Company (Mississippi Valley) and answers United Gas Pipe Line Company's motion to dismiss Mississippi Valley's motion to reject, cancel and dismiss, in part, rate filings made by United in the above-entitled proceedings.

United has moved for dismissal of Mississippi Valley's motion insofar as the motion seeks dismissal of United's rate filings, purporting to increase United's rates to Texas Gas Transmission Corporation and Southern Natural Gas Company. United asserts as grounds for its motion that Mississippi Valley has not shown that it is authorized by Texas Gas and Southern to seek such relief and in any case is not a party to, nor in privity with, the contracts between United and Texas Gas and United and Southern.

These grounds are not well-taken.

2803

I.

United's motion is based upon the mistaken premise that the matter involved is confined solely to a private contract as to which only the signatories thereto may be heard. The fact, however, that the Commission has permitted Mississippi Valley, among other parties, to intervene shows that more is involved and that there are other parties who have an interest and are entitled to be heard with respect thereto.

By reason of its status as a direct customer of United and an indirect customer through purchases of natural gas

as a customer of Texas Gas and Southern, Mississippi Valley was permitted to intervene in these proceedings and is consequently a party thereto. As such Mississippi Valley is entitled to invoke whatever remedies are available under the Natural Gas Act against unlawful actions that adversely affect its interests.

Its right to invoke the protection of the Natural Gas Act on its own behalf as a consumer and on behalf of its own customers is not one whit dependent upon leave, consent, grace or largesse of any other party to the proceeding, including Texas Gas and Southern. "The primary aim of this legislation (the Natural Gas Act) was to protect consumers against exploitation at the hands of natural gas companies" (*Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 610, 612) and the purpose of the power given the Commission "is the protection of the public interest, as distinguished from the private interests of the utilities" (*Federal Power Commission v. Sierra Pacific Power Company*,

## 2604

slip opinion, p. 7). It would indeed be very odd if the beneficiaries of the Act could not invoke the statute for their benefit. It would make a sham of the Act. Under United's theory even the Commission's staff could not question the rate filing because it is not a party to the contracts in question.

Since the consumers are too numerous to be heard individually, it is entirely proper for the distributors, who stand in closest juxtaposition to the consumers, to make representation to the Commission on behalf of that consumer interest as well as on behalf of their own interest.

Nor must Mississippi Valley be a party to or in privity with the contract to seek the relief provided by the Act.

(2604)

In fact, the landmark rate cases under the Natural Gas Act were originated by consumers and consumer representatives seeking relief from contractual rates specified in contracts to which they were not parties or in privity. If United and Texas Gas and Southern mutually agreed by contract to a manifestly unjust level of rates, may it be supposed for a moment that Mississippi Valley could not challenge the rates and secure relief under the Act? United, Texas Gas and Southern obviously cannot by contract deprive Mississippi Valley of the remedies of the Act.

In any case, having been made aware of the issue regarding the effect of the *Mobile* case on United's efforts to increase its rates to Texas Gas and Southern, charged with the responsibility of administering the Natural Gas Act in the public interest, the Commission can and must take cognizance of the issues and deal with them, since a basic jurisdictional question is involved.

2605

## II.

Neither Texas Gas nor Southern join United in its motion to dismiss, but they stand shoulder to shoulder with United in construing the service agreements as representing mutual agreement for unilateral rate filings by United. They do not say that the service agreement in terms so provides, and they could not. For the agreement is only that the rates are subject to change in accordance with the requirements of the Act. To borrow a phrase from the Supreme Court's decision in the *Mobile* case, this agreement proves only that the rates "may be changed, not that they may be changed unilaterally" (slip opinion, p. 8). The contract does not say or purport to say in what manner the change may be made. To find in the language of the service agreements a further purpose to empower United to change the contract rates unilaterally "requires reading



into it language that is neither there nor reasonably to be implied". *Mobile* case, slip opinion, p. 7. The language of the service agreements represents no more than an agreement to pay superseding rates legally made effective. The word "effective" necessarily means "legally effective".

Recognizing that the service agreements express no arrangement for unilateral changes in rates, United, Southern and Texas Gas argue that such an agreement is to be implied from the fact that unilateral changes in contract rates was accepted Commission practice at the time the service agreements were executed. But the plain import of the *Mobile* decision is that such a construction is not lightly to be implied because of the public, as distinguished from the private, interest

### 2606

involved in the matter at issue, and because of the purpose of the Natural Gas Act to protect the public interest, particularly the interest of consumers.

In any event, accepted Commission practice cannot read into a contract what is not there or alter it. It will be recalled that the contract in the *Mobile* case was executed in 1946 when the accepted Commission practice was in effect, and this practice was heavily relied upon in the *Mobile* case to sustain the unilateral change, but to no avail.

Moreover, the existence of an accepted Commission practice of unilateral changes in contract rates enforces Mississippi Valley's construction of the language of the service agreements rather than United's inference. Assuming such was the accepted practice, the proper inference is that the service agreement did not include mutual agreement for unilateral changes because no such mutual agreement was thought necessary. (See in this regard Paragraph IV of this answer.)

## III.

In connection with the consideration of background in construing the language of the contract, United, Southern and Texas Gas would have the Commission ignore the fact that United fought successfully in *United Gas Pipe Line Company v. Federal Power Commission* (181 F. 2d 796) to establish the proposition that the Commission's rules which brought about a conversion of the contracts to the present tariff-service agreement, form did not and could not alter the contractual rights of the parties. The service agreements must be construed, if one is to go

2607

beyond the four corners of the agreements, in the light of that fact. United, however, would now have the Commission conclude that the service agreements that did not alter rights established in contracts between the parties, did somehow alter those rights.

## IV.

Furthermore, if, in interpreting the service agreements, background is to be considered, the following must be considered and from it the conclusion is inescapable that the language of the service agreements do not constitute agreement for the unilateral filing of changes by United:

On May 29, 1952 United filed its FPC Gas Tariff, Original Volume No. 1, to be effective July 1, 1952. Paragraph 13 of the General Terms and Conditions of said tariff, appearing on Original Sheet No. 92, provided that:

"The following provision shall be contained in or apply to each such Service Agreement: The rates established by Seller are designed to reflect Seller's cost of rendering service to provide a fair rate of return to Seller. In the event of an increase in Seller's cost, or of any change which would result in the rate of the Seller providing less than a fair rate

(2808)

of return, *Seller shall have the right to revise its rates to reflect such change.* Such revised rates shall be charged only after they have been filed with the Federal Power Commission and become effective in accordance with its rules and regulations." (Emphasis supplied)

The form of service agreement contained the above-quoted paragraph and the following language, which also appears in the present service agreements, namely—

**2608**

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedules , or any effective superseding rate schedules, on file with the Federal Power Commission."

If, as United, Texas Gas and Southern claim, the language immediately quoted above represented mutual agreement for unilateral filings by United, it would not have been necessary for United to reserve the right to make unilateral filings. Obviously, there was no agreement for unilateral filings in this language.

The tariff tendered for filing on May 29, 1952 was rejected by the Commission because, among other things, the Commission claimed that the tariff was in conflict with its rules. The Commission contended that the provision reserving to United the right to file unilateral changes was an "escalator" provision in contravention of Section 154.38(3) of the Commission's rules which prohibits any provision which—

"in any way purports to effect the modification or change of any rate or charge specified in the rate schedule, or the substitution therefor of any other rate or charge . . ."

United subsequently tendered for filing on July 2, 1952 a revised tariff from which the proposed reservation for



(2608)

unilateral filings was omitted from the General Terms and Conditions and from the service agreements.

In so doing United explained to the Commission that—

“in placing the foregoing provision in its Tariff (United) was under the impression that it was merely placing its customers on notice of its right and obligation to file reasonable rates, as provided by

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the Natural Gas Act. United was at that time, under the impression that the provision did not ‘purport to effect the modification or change’ or ‘purport to effect the substitution’ of any other rate or charge.”

This “notice” would not have been necessary if, as now claimed by United, Southern and Texas Gas, the service agreement represented mutual agreement to unilateral filings by United. This should serve to put to rest any effort to distort the plain language of the present service agreements into consent to unilateral filings. The fact is, that United had no such agreement under the contracts in effect when it converted to the tariff-service agreement form. It thought it needed none and secured none by the conversion. This conclusion is completely unaffected by the Commission’s interpretation of the provision for unilateral filing as representing an “escalator” provision in violation of its rules. Howsoever described, the fact remains unaltered that the provision which might have constituted mutual agreement to file unilateral changes, which no other language in the service agreement provided, was dropped.

## V.

Further evidence of the lack of agreement for unilateral changes is found in Paragraph 13 of the presently effective General Terms and Conditions and of Article VII of the

presently effective service agreements which repeat, *in haec verba*, the language of Paragraph 13. Paragraph 13 provides that—

“No modification of the terms and provisions of an executed Service Agreement (other than Exhibits as provided for therein) shall be made except by the execution of a new service agreement.”

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### VI

We suggest further that under the holding of the *Mobile* case, an agreement authorizing the unilateral filing of an unspecified new rate does not dispose of the issues raised by Mississippi Valley's motion. Such an agreement is not a mutual agreement on a specific, new rate. It could be no more than an agreement for United to propose and the customers to oppose. But this is exactly what the *Mobile* case holds is not authorized. Section 4(d) does not authorize and the contracting parties cannot by agreement legislate a rate-change procedure not contemplated by the Act. As the Supreme Court said in the *Mobile* case (slip opinion, p. 10):

“Section 4(d) provides not for the filing of ‘proposals’ but for notice to the Commission of any ‘change’ . . . .”

If the rates are contract rates, as they are here, and were in the *Mobile* case, the filed new rate is a “notice” of change only where it has been agreed to by seller and customer. If the specific rate has not been agreed to, as is the case here, it can only be a “proposal”. In the latter instance Section 4 is not available to the seller even if the intent of the service agreement was to confer a right for unilateral proposals. The agreement confers nothing.

## VII.

Southern quite candidly reveals the necessity for its position. Southern, in common with United and perhaps other pipeline companies, is in the same position as United with respect to its own service agreements with its customers. While this emphasizes the lack

## 2611

of identity of interest between Texas Gas and Southern and Mississippi Valley and the necessity for Mississippi Valley's participation to project its interests and the interests of its consumers, the circumstances that impel Southern and Texas Gas to take a particular position do not permit alteration of the plain language of the agreements. Furthermore, such circumstances do not impair or affect the Commission's discharge of its responsibilities under the Act.

## VIII.

In an effort to distinguish the Mobile contract from a service agreement, United invents a new contract classification. The Mobile contract, it says, was a "common law contract" with no provision for change, whereas the service agreements expressly contemplate and provide for change in rates.

But there is no such classification as "common law contract". Contracts are classified as formal or informal; bilateral or unilateral. Formal contracts are contracts under seal, recognizances, and negotiable instruments. Informal contracts are all other types. *Restatement of the Law of Contracts*, American Law Institute, Vol. I, p. 9. In the manner of Gertrude Stein: "A contract is a contract, is a contract, is a contract, even if it be called a service agreement."



There is no distinction between the Mobile contract and the service agreements, in any case. The service agreements and the Mobile contract were entered into after the passage of the Natural Gas Act. The Mobile contract said nothing about a different rate, whereas the

## 2612

service agreements make reference to lawfully effective superseding rates. This is a difference in form only because the provision for lawfully effective superseding rates was necessarily implied as a part of the Mobile contract by operation of law.

## IX.

United apparently recognizes the necessity for a *quid pro quo* if the agreement is to be construed as an agreement for unilateral changes. It therefore refers (United motion, p. 11) to a reciprocal right on the part of the purchaser to oppose the increase or to seek a Commission order upon complaint requiring a filing to change tariff rates to conform to the order which the Commission might enter. But no agreement is necessary to secure such rights for the purchaser. The right to oppose an increase lawfully proposed and to secure changes in rates is accorded a purchaser by Congress under the Natural Gas Act. Thus, United is unable to point to any consideration supporting the alteration of the purchaser's rights which remained inviolate notwithstanding the adoption of the tariff-service agreement form.

WHEREFORE, United's motion to dismiss should be denied and Mississippi Valley's motion granted for here, as in the *Mobile* case,

## 2613

the Commission's duty is to reject the unauthorized filing, "and its failure to do so and its order 'permitting' the

(2613)

new rates to become effective" would be "in error".  
*Mobile case, slip opinion, p. 15.*

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Received April 16, 1956

**Answer to Motion of United Gas Pipe Line Company to Dismiss Motion of City of Memphis and Memphis Light, Gas & Water Division to Reject, Cancel and Dismiss Rate Filings in Part**

Comes now the City of Memphis and Memphis Light, Gas & Water Division (hereinafter jointly referred to as "Memphis") and answer United Gas Pipe Line Company's motion to dismiss Memphis' motion to reject, cancel and dismiss, in part, rate filings made by United in the above entitled proceedings.

United has moved for dismissal of Memphis' motion insofar as the motion seeks dismissal of United's rate filings, purporting to increase United's rates to Texas Gas Transmission Corporation. United asserts as grounds for its motion that Memphis has not shown that it is authorized by Texas Gas to seek such relief and in any case is not a party

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to, nor in privity with, the contracts between United and Texas Gas.

The City of Memphis and the Memphis Light, Gas & Water Division are full parties of record to this proceeding and as a matter of course are entitled in the own right, without any authority from Texas Gas, to take any procedural step allowed by the Rules and Regulations of this Commission.

Furthermore, Memphis requires no grant of authority from Texas Gas before taking action to protect itself

against an unlawful increase in the price of gas sold by United to Texas Gas, regardless whether or not Texas Gas is willing to pay such an increase.

Memphis has direct and immediate interest in the contractual arrangements between Texas Gas and United, insofar as those arrangements affect the cost of gas purchased from United by Texas Gas. This fact was recognized by the Commission's allowance of intervention to Memphis over the objection of United.

Memphis furthermore, as a party in interest in this proceeding, has a right to object to action taken by United in violation of the Commission's Rules and Regulations, when such action directly affects Memphis. In the present case, United is attempting unilaterally to increase its rates to Texas Gas in violation of such regulations. Specifically, Sec. 154.38(d)(3) of the Rules and Regulations expressly grants to natural gas companies the right to file service agreements reserving

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the privilege in the seller to propose to the Commission a modification of the then effective rate; but such privilege is expressly limited to cases in which the service agreement sets forth the "certain specified conditions" under which such modification may be proposed. The said section states in pertinent part:

" . . . a natural-gas company may state in the service agreement or in rate schedules filed pursuant to § 154.52 that it is or will be its privilege, under certain specified conditions, to propose to the Commission a modification, change or substitution of the then effective rate or charge: . . . "

The above regulation provided the means by which a natural gas company could reserve a *bilateral contractual*



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privilege to file a notice of increase in rates, and such privilege could be availed of only when the seller had stated in the service agreement the specific conditions under which an increase could be proposed.

Prior to the decision of the United States Supreme Court in *United Gas Pipe Line Company v. Mobile Gas Service Corporation* the Commission allowed natural gas companies to file proposals for *unilateral* increases in rates, regardless of the terms of the companies' contracts. The *Mobile* decision now makes it clear that " . . . the Natural Gas Act does not give natural gas companies the right to change their rate contracts by their own unilateral action".

The companies accordingly must now find a bilateral contractual

2877

basis for any increases in rates other than under § 5(a) of the Natural Gas Act. United purports to find contractual justification for its proposed increase in rates in that portion of its rate schedule providing for payment under existing schedules "or any effective superseding rate schedules." The quoted language, however, fails utterly to comply with the requirement of § 154.38(d)(3) that in order to reserve in a service agreement the privilege of proposing increases in rates, the seller must specify in the agreement those certain conditions under which such privilege can be exercised.

United has convincingly pointed out in its answer to Memphis' motion that its contracts with Texas Gas were entered into pursuant to and in compliance with the Regulations of the Commission. If United had desired to reserve a bilateral contractual privilege to apply for increases in rates, § 154.38(d)(3) of the Regulations clearly and explicitly set forth the conditions under which such privilege

could be reserved. United has made no slightest pretense of complying with those conditions. Its effort at this time to exercise the very privilege which it has failed to reserve in the only manner provided by the Regulations is a violation not only of its contracts with Texas Gas but also of the Regulations themselves.

Memphis, therefore, has standing to make its motion to dismiss.

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United's rates to Texas Gas, because:

- (1) Memphis is a party to this proceeding,
- (2) Memphis has a direct interest in the contracts by which Texas Gas purchases from United, and
- (3) United's attempt to increase its rates in this proceeding is a violation not only of its contracts with Texas Gas, but also of the Rules and Regulations of the Commission.

WHEREFORE, Memphis respectfully prays that United's violation to dismiss Memphis' motion be denied and that Memphis' said motion be granted.

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Received April 19, 1956

Reply of United Gas Pipe Line Company to the "Answer" of Mississippi Valley Gas Company to United's Answer to Mississippi Valley's Motion to Dismiss

United Gas Pipe Line Company (United) files herewith its Reply to a paper filed by Mississippi Valley Gas Company (Mississippi Valley) and styled "Answer to Motion of United Gas Pipe Line Company to Dismiss Motion of Mississippi Valley Gas Company to Reject, Cancel and Dismiss Rate Filings in Part." Mississippi Valley's An-

swer, on examination, is not an answer to United's Motion to Dismiss, but an answer to United's Answer on the Merits of Mississippi Valley's Motion. United replies as follows:

# I.

Mississippi Valley neither shows nor claims authority from Texas Gas and Southern Natural for and on their behalf to seek dismissal of United's Notice of Change of

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Rate as to them; the answers of Texas Gas and Southern Natural negatives such authority in Mississippi Valley by their affirmative agreement with United's Answer on the meaning and effect of the Service Agreements between United and each of them. The "Answer" of Mississippi Valley constitutes concession that it is without capacity or right to move to dismiss for and on behalf of Texas Gas and Southern Natural. Thus, the motion of Mississippi Valley insofar as it is in behalf of such two companies should be dismissed.

# II.

In its motion, Mississippi Valley strained to claim that the only relationship between United and Texas Gas and Southern Natural was contractual, coupling its effort with the claim that United's notice of a change was "unilateral". Assuming (contrary to the fact, as United's answer demonstrates) that the Service Agreements could be equated to the common-law contract involved in *Mobile*, Mississippi Valley contended that under the *Mobile* decision "Contract rates may be changed only by mutual agreement between the seller and buyer . . .", and "since there has been no



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mutual agreement between United and \* \* \* Texas Gas and Southern for the change \* \* \* the filings are a nullity". (p. 5, Motion).

The lack of mutual agreement claimed was between United and Texas Gas, United and Southern Natural. Indeed, if agreement is here required, as Mississippi Valley contends, "mutual" would restrict it solely to United and Texas Gas, United and Southern Natural. The *Mobile* opinion which Mississippi Valley invokes makes that plain when it says:

"The obvious implication is that, except as specifically limited by the Act, *the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act: \* \* \* to fix by contract, and change only by mutual agreement, the rate agreement with a particular customer.*" (Emphasis supplied. Slip Opinion, p. 11).

Being confronted with its lack of capacity for lack of privity to assert rights of a contract party, and Texas Gas and Southern Natural by answers negating the position it sought to create: Mississippi Valley now seeks to retrieve by denying those contract rights invoked but rather those of a party who had been permitted to intervene with consequent entitlement to remedies against

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actions unlawful under the Act. But the Commission's order permitting Mississippi Valley to intervene neither purports nor can it involuntarily create privity of contract for Mississippi Valley on contracts or agreements to which it is a stranger.

The *Mobile* decision makes plain that the "unlawfulness" of the filing there involved was not decreed by the Natural

(2689)

Gas Act but arose from contract law which prohibited a change in a contract in the absence of provision for change save by mutual agreement of the parties to the contract. Provision for change here appears in the Service Agreements.

Mississippi Valley thus abandons its motion and claim that the Service Agreements are equivalent to the *Mobile* contract and cannot be changed absent a mutual agreement therefor, and, instead, invokes the "public interest" and the power of the Commission. On this ground, the *Mobile* decision likewise lends no support to Mississippi Valley, for the Supreme Court says:

"The powers of the Commission are defined by §§ 4(e) and 5(a). The basic power of the Commission is that given it by Section 5(a) to set aside and modify any rate or contract

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which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory or preferential.' This is neither a 'rate-making' nor a 'rate-changing procedure'. It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them." (Slip Opinion, p. 8-9).

That the Act does not make the filing unlawful is made clear by this conclusion of the Court:

"In short, the Act provides no 'procedure' either for making or changing rates; it provides only for notice to the Commission of the rates established by natural gas companies and for review by the Commission of those rates. The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act." (Emphasis by the Supreme Court; Slip Opinion, p. 10).

What Mississippi Valley now says is that the Commission can review. United agrees; and points out that is precisely what the Commission now is engaged in doing. But such "review" is a far cry from the right not to consent to change which *Mobile* holds exists to a contract party to a common-law contract such as is there involved providing for firm rates for a fixed term with no provision for change. As a party intervenor in such "review", Mississippi Valley, within the scope of the Commission's orders permitting it

## 2691

to intervene, can participate in the hearing and determination of the issues to be decided. Mississippi Valley is doing so in hearings now in course.

Mississippi Valley's claim to be a trustee or next friend for consumers fools nobody; for it is not only not a consumer, as it admits, but it is plainly evident that Mississippi Valley seeks to lower the cost of gas to it in order to enlarge its margin of profit from the "consumers". Mississippi Valley's position is obviously hostile to the interest of the consumers, which prohibits its being such a trustee.

## III.

In Paragraph II, Mississippi Valley discloses two fundamental misconceptions, i. e., that the Service Agreements provide for rate changes "in accordance with the requirements of the Act" (p. 4), and that agreement for "unilateral change" is to be implied from "accepted practice" (p. 4). The *Mobile* case makes clear that rates are not changed pursuant to "the requirements of the Act", for the Court says that, " \* \* \* change is effected, if at all, not by an order of the Commission but solely by virtue of the

natural gas company's own action." (Slip Opinion, p. 10). United was held "without power" to effect a change because its contract was for firm rates for the entire term *with no provision for change* where the other contracting party (Mobile) was standing on its no-change contract. Here the Service Agreements contain mutual agreement for change.

In 1946, when the *Mobile* contract was executed, the issue decided in *Mobile's* case had not been raised. The Court in *Mobile* said that the Court of Appeals decision was the first consideration of the question presented. The *Mobile* decision, in 1956, is not an authoritative part of the context and surrounding circumstances in which the Service Agreements executed at a prior date are to be construed. They are to be construed in the light of conditions and understandings at the time. Thus, the meaning and intent of the " \* \* \* or any effective superseding rate schedules, on file with the Federal Power Commission" is to be tested and construed in the light of the practices and understandings surrounding the emergence and execution of the Service Agreements. *Mobile* dealt with a claimed construction of the Act; this motion with construction of the Service Agreement controlling.

Mississippi Valley asserts *Mobile* prohibits any implication of language, but violates the claim by reading into the Service Agreements the word "legally" before the word "effective". But "effective" is ambiguous and clearly means the time when the changed rate supersedes. "Effective" is not the controlling word, for the intent of the parties in such language was in essence a filing subject to the opposition and contest of the other party to the contract and equally subject to the arbitrament



of the review which the Commission had undoubted power to make equally and coextensively under Sections 4(e) and 5(a).

#### IV.

Mississippi Valley, in Paragraph III, repeats its misrepresentation of the holding in *United Gas Pipe Line Company v. Federal Power Commission*, 181 F. 2d 796. United respectfully refers the Commission to Paragraph II(11) of its Answer to Mississippi Valley's motion where this misstatement is corrected.

#### V.

Mississippi Valley's attempted distortion of deleted language in the rejected first filing of United's conversion tariff does not make against the clear meaning of the mutual

#### 2694

agreement for change of rate contained in the Service Agreements.

Section 154.38(d)(3) of the Commission's Rules governing the composition of rate schedules prohibited specified clauses which might result in automatically adjusting or changing rates. The second proviso of the rule confirms this intent by requiring the filing and notice which the Commission then (before *Mobile*) considered Section 4(d) made mandatory. It thus meant to insure its right of suspension, review, etc., in a proceeding which the Commission then believed Section 4(e) permitted.

The first two sentences of the deleted language dealt not with a mutual agreement for change of rate; but with the grounds justifying adjustment or change which the Commission obviously construed as calling for or per-

mitting an automatic adjustment or change prohibited by Section 154.38(d)(3). It apparently thought the last sentence related only to power to collect, not compliance with what it then believed was the "filed rate procedure" of Section 4. United, realizing the Commission's position, gave assurance it had incorporated the language, believing "that the provision did not 'purport to effect the modification or change' or 'purport

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to effect the substitution' of any other rate or charge." Since the Commission felt such language would permit what Section 154.38(d)(3) prohibited, United thought the Commission view should be respected and the language stricken, both in the General Terms and Conditions and in the Service Agreements. Thus, the deletion met the requirements of the body of such rule and that of the last proviso. There was left the language of the Service Agreement containing mutual agreement for change which met the permission of the first proviso of such regulation.

## VI.

Mississippi Valley's position on Article VII of the Service Agreement is without force. Article IV refers to a particular rate schedule in the tariff to identify the applicable rate and provides that the referred to rate may be changed by a change in the applicable rate schedule as provided in Article IV. When such mutually provided for change is accomplished, "no modification of the terms and provisions" of the Service Agreement results.

## VII.

The *Mobile* decision holds that:

"In short, the Act provides no 'procedure' either for making or changing rates; \* \* \*

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The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act". (Slip Opinion, p. 10).

In that case, the Court held the particular contract controlling. Mississippi Valley's complaint that the Service Agreement is not as specific as it would prefer is unavailing. If *Mobile* is applicable to the Service Agreement as contended, the terms of the Service Agreement, not Section 4(d), govern the change of rate. By the same token, the parties are free to agree "for United to propose" and the other parties to the Service Agreement to oppose. *Mobile* puts no limit upon the freedom of the parties to agree; it merely says that notice thereof must be filed under Section 4(d) before such agreement can become operative. *Mobile* places no impediment to an agreement on a procedure which the parties also thought to be stipulated by the Act; it only declares such procedure is not required by warrant of the Act alone.

### VIII.

What is said in Paragraph VII about the positions and motives of Texas Gas and Southern Natural is pure speculation contributing nothing to the question posed by Mississippi

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Valley's motion. On the subject of a candid revealing, we note that Mississippi Valley frankly confesses that it has a hostile position to Texas Gas and Southern Natural which is conclusive of its lack of capacity and power to assert a "contractual" position which is exercisable only by Texas Gas and Southern Natural.



## IX.

Mississippi Valley's views about a contract expressed in Paragraph VIII are as sterile as its learned exhibitionism of familiarity with Gertrude Stein. Repetition of a meaningless phrase by Mississippi Valley will not produce self-hypnotism that will clothe its contention with vitality. United respectfully refers the Commission to its Answer, which clearly distinguishes the common-law contract such as *Motile* involved from the Service Agreements. Mississippi Valley advances nothing to answer those distinctions as listed.

## X.

Mississippi Valley continues its conflicting position in Paragraph IX. On the one hand, it says the Service Agreement is a contract binding the parties; on the other, it says the contract is a one-way street binding only the seller

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because it is claimed the Act accords the purchaser the right to oppose. But the Act makes no such provision. It does, in Section 5(a) and 4(e), list those authorized to make complaint to the Commission, which then is vested with discretion whether to review. The mutual reciprocal rights of the Service Agreements give both parties by agreement valuable rights of access to the Commission for and against a notice of change or a complaint on a basis of agreement that strongly appeals to the discretion of the Commission to review.

## XI.

As to the Service Agreements executed by Mississippi Valley, United says that Mississippi Valley is bound and concluded by the matters set out in United's Original



Answer as well as by its own acts thereabout, likewise set out in said Answer.

**2699**

WHEREFORE, premises considered, United prays as in its Original Answer that the Commission strike and dismiss the unauthorized effort of Mississippi Valley to secure dismissal of the notice of change in tariff rates as to Texas Gas and Southern Natural; and that Mississippi Valley's motion be in all things denied, and for such other orders as the Commission deems proper.

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**2706**

Received April 20, 1956

**Reply of United Gas Pipe Line Company to the "Answer" of City of Memphis and Memphis Light, Gas & Water Division to United's Answer to the Motion to Dismiss of the City of Memphis and Memphis Gas, Light & Water Division**

United Gas Pipe Line Company (United) files herewith its reply to a paper filed by Memphis Gas, Light & Water Division and the City of Memphis (both hereafter referred to as "Memphis"), Intervenor, and styled "Answer to Motion of United Gas Pipe Line Company to Dismiss Motion of the City of Memphis and Memphis Light, Gas & Water Division to reject, cancel and dismiss rate filings in part". Memphis' answer, on examination, is not an answer to United's Motion to Dismiss, but an answer to United's answer on the merits of Memphis's motion. United replies as follows:

**2707**

1.

Memphis' answer admits lack of authority from Texas Gas, which is the only person possessing the right and

authority to raise the "contract" question posed by Memphis, if such issue be raisable. The answer of Texas Gas negatives any right in Memphis and contains no such objection as Memphis would like to raise. Therefore, even if "consent" is requisite, which is denied, the answer of Texas Gas constitutes "consent". Therefore, the motion of Memphis should be dismissed.

## 2.

In its motion, Memphis strained to claim that the only relationship between United and Texas Gas was contractual, coupling its effort with the claim that United's notice of a change was "unilateral". Assuming (contrary to the fact, as United's answer demonstrates) that the Service Agreements could be equated to the common-law contract involved in *Mobile*, Memphis contended that under the *Mobile* decision rates could not be changed unless consented to by "mutual agreement" (p. 5 Motion).

The lack of mutual agreement claimed was between United and Texas Gas. Indeed, if agreement is here required, as

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Memphis contends, "mutual" restricts the question solely to Texas Gas and United. The *Mobile* opinion which Memphis invokes makes that plain when it says:

"The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act: \* \* \* to fix by contract, and change only by mutual agreement, the rate agreement with a particular customer." (Slip Opinion, p. 11).

## 3.

Being confronted with its lack of capacity for lack of privity to assert rights of a contract party, and Texas Gas by answer negating the position it sought to create: Memphis now seeks to retrieve by asserting instead that it is a "full" party of record entitled to take "any procedural step" permitted by the Commission's Rules, and that its "direct" interest in the contractual arrangements between Texas Gas and United was recognized by the Commission's allowance of its intervention. But the Commission's order permitting Memphis to intervene neither purports nor can it involuntarily create privity of contract for Memphis on contracts or agreements to which it is a stranger.

Whether, or what, procedural steps may be taken by Memphis under the Rules and Regulations of the Commission

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is a matter of no interest whatever here. The question posed by the motion is whether Memphis can assert a fundamental substantive right which, if it exists, is available only to a party to the contract or one in privity therewith, and Memphis admittedly is neither a party to, nor in privity with, the Service Agreements.

## 4.

Next Memphis says that it requires no grant of authority from Texas Gas to protect itself against an "unlawful" increase in the price of gas—"unlawful" because in Memphis' view the filing is unauthorized by the Service Agreements. The *Mobile* decision, on which Memphis relies, makes plain that the "unlawfulness" of the filing there involved was not decreed by the Natural Gas Act but



arose from contract law which prohibited a change in a contract containing no provision for change save by mutual agreement of the parties to the contract. Provision for change here appears in the Service Agreements.

The matter is put in proper perspective, in this phase of Memphis' "answer", by the *Mobile Decision* when it declares:

### 2710

"The powers of the Commission are defined by §§ 4(e) and 5(a). The basic power of the Commission is that given it by Section 5(a) to set aside and modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory or preferential.' This is neither a 'rate-making' nor a 'rate-change in procedure'. It is simply the power to review rates and contracts made in the first instance by natural gas companies, and, if they are determined to be unlawful, to remedy them." (Slip Opinion, p. 8-9).

That the Act does not make the filing unlawful is made clear by this conclusion of the Court:

"In short, the Act provides no 'procedure' either for making or changing rates; it provides only for *notice* to the Commission of the rates established by natural gas companies and for *review* by the Commission of those rates. The initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Act." (Emphasis by the Supreme Court; Slip Opinion, p. 10).

Thus the Commission by permitting Memphis to intervene merely exercised its discretion to permit Memphis to participate in the determination of the issues on the hearing now in progress. The Commission could not by order or by rule or regulation vest Memphis with a "direct" interest in the Service Agreements to which Memphis is not a party.

Memphis thus abandons its motion and claim that the Service Agreements are equivalent to the *Mobile* contract that cannot be changed absent a mutual agreement therefor, and

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instead is saying that the Commission can review. United agrees, and points out that is precisely what the Commission now is engaged in doing. Even where there is a *Mobile* type contract, *Sierra Pacific* points up the wide scope of this "review" by concluding:

"If the proceedings here satisfied in substance the requirements of § 206(a), [substantially like § 5(a) of the Act], it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate". (Slip Opinion, p. 5)

But such "review" is a far cry from the right not to consent to change which *Mobile* holds exists to a contract party to a common-law contract such as is there involved providing for firm rates for a fixed period with no provision for change. As a party intervenor in such "review", Memphis within the scope of the Commission's order permitting it to intervene can participate in the hearing and determination of the issues to be decided. It cannot arrogate to itself exercise of powers which contract law denies it.

5.

Finally, Memphis says that the provision for change in the Service Agreements makes the filing in G-9547 unlawful because such provision for change does not meet the requirement of the first proviso in Section 154.38(d)(3) of the Commission's Rules and Regulations, and more particular-

ly the phrase in such Rule, " \* \* \* under certain specified conditions \* \* \* ". Memphis does not seem to know what it thinks "under certain specified conditions" means, but it declares United has not complied with "those conditions", whereby Memphis says United does not have "bilateral contractual privilege to file a notice of increase in rates", (p. 3, "Answer") which it confesses United would have under that Rule.

The short answer is that the Commission has approved the Tariff and form of Service Agreement therein provided and permitted the same to be filed. Compliance with Section 154.38(d)(3) thus stands adjudicated; nor did the Commission find absence of the "specified conditions", rather it approved the conditions of the Service Agreements and has specifically applied them as to Texas Gas. The adjudication is plural: (1) On July 3, 1952, at Docket G-2019, United filed its Conversion Tariff in Volume 1 of which was the form of Service Agreements. The Commission on July 31, 1952, approved and ordered the Tariff filed except as to certain increased rates, which rates were suspended subject to hearing. (2) On July 25, 1952, at Docket G-1869, the Commission issued its Opinion 232 granting United a certificate for certain service as therein provided to Texas Gas and ordering a service agreement and rate filed in accordance

with said opinion. On August 21, 1952, United filed the Service Agreement with Texas Gas dated August 11, 1952, together with the rolled-in rate in accordance with said opinion. On September 18, 1952, the Commission issued an order accepting the Service Agreement and ordering it filed. (3) Docket G-2019 was consolidated with other dockets and in course of hearing, a settlement was arrived



at (Texas Gas and Memphis participating) subject to Commission approval which was given in Opinion 277 issued November 2, 1954. As pointed out in its original answer to the Motion of Memphis, this settlement, pursuant to what Memphis calls the "unlawful" language of this Service Agreement, resulted in Rate Schedule PL-4 being superseded by Rate Schedule PL-C. From this it is clear that the "certain specified conditions" were sufficient to produce the intended result to the satisfaction of the Commission, Texas Gas and United, the parties affected. Nor did Memphis, which was a party on such consolidated dockets, object or oppose; instead, it whole-heartedly approved and agreed. As ordered by Opinion 277, United on January 24, 1955, filed its First Revised FPC Gas Tariff, Volume 1, and this filing was approved and accepted by letter dated February 2, 1955, signed by the Secretary.

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of the Commission with the notation "By order of the Commission".

So within two years and four months, the Commission three times expressly approved the form of the Service Agreements containing the language Memphis says violates the Commission Rules—two of such orders involving the Service Agreements with Texas Gas. The Commission would hardly repeatedly approve a Service Agreement that flaunted its own Rules and Regulations. The claim of "unlawfulness" from "violation of such regulations" is consequently shown to be specious.

Since Memphis declares that "compliance" with such regulations would produce "bilateral contractual privilege" to do what United has done, and since the Commission has adjudged that the Service Agreements meet the requirements of such Rules and Regulations: It follows that United and Texas Gas, by the Service Agreements,

have the "bilateral contractual privilege" for filing a "notice of increase in rates" (p. 3 Memphis Answer) and that such filing is not subject to attack such as Memphis would make.

United described the rights flowing from the phrase

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"\* \* \* or any effective superseding rate schedules, on file with the Federal Power Commission"

as creating mutual reciprocal rights, but finds Memphis' phrase "bilateral contractual privilege to file a notice of increase in rates" appropriate and acceptable. United notes that the Memphis phrase takes into account, as it should, that "rate schedules" in the language of the Service Agreements are in the plural. This correctly mirrors the intent of the language. United also is gratified at Memphis' frank concession that prior to *Mobile*, the Commission recognized and approved the generally accepted understanding that natural gas companies had the right to file the proposals for rate increases (p. 3, Memphis' answer) for that explains the manner of the meeting of the minds as to the meaning of the Service Agreements and the color of the surrounding circumstances outlined by United in its original answer which give point to and are reflected in the words used.

Memphis at the end, recognizing the entire lack of force in its original position, falls back heavily, albeit plaintively, on the ground that it is a "party" to the proceeding and therefore has "standing". This is somewhat confusing in

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view of its claim that the "proceeding" is a nullity. It is, mayhap, true that a "party" to a nullity has "standing" in a nullity. In any event Memphis' "answer" demonstrates that its interest, if indeed it have any, is too thin

to be appreciable and that thereby the Commission's order permitting Memphis to intervene was an improvident largesse of the Commission's discretion.

WHEREFORE, premises considered, United prays as in its original answer that the Commission strike and dismiss the unauthorized effort of Memphis, not being the real party at interest or having the capacity thereabout, to secure dismissal of the notice of change in tariff rates to Texas Gas, and subject thereto that the motion of Memphis be in all things denied, and for such other orders as the Commission deems proper.

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100-2 FORMAL

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper and William R. Connole.

Docket No. G-9547

In the Matter of

UNITED GAS PIPE LINE COMPANY

Order Fixing Date for Oral Argument

(Issued April 25, 1956)

On September 30, 1955 United Gas Pipe Line Company (United) filed 31 tariff sheets to become effective November 1, 1955 proposing, among other things, an increase in rates of approximately \$9,978,000 annually. The Commission by order issued October 26, 1955 suspended until April 1, 1956 all the tariff sheets except those covering the sale of gas for resale for industrial use only.



On March 20, 1956 United filed a motion pursuant to Section 4 (e) of the Natural Gas Act to place in effect on April 1, 1956 the tariff sheets suspended by the Commission order of October 26, 1955.

Mississippi Valley Gas Company, Memphis Light, Gas and Water Division jointly with the City of Memphis, Tennessee (Memphis), and the City of Jackson, Mississippi, have filed motions to (a) prohibit United's rate increase from becoming effective April 1, 1956, (b) reject part of such rate increase and (c) order refunds under United's increased industrial use rates which were not subject to suspension and therefore became effective November 1, 1956.<sup>1</sup> Such motions are based on the allegation that United's tariff filings were a unilateral change in "contractual rate" which is prohibited under the rule of the decision promulgated in *United Gas Pipe Line Co. v. Mobile Gas Service Corp. et al.*, 350 U.S. 332.

United filed answers to the motions filed by Mississippi Valley and Memphis alleging that (a) the service agreements grant either party the right to seek changes in accordance with the Natural Gas Act and (b)

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the tariff including the form of service agreement is ex parte and may be changed unilaterally. Texas Gas Transmission Corporation filed answers in support of United's position as to "mutual consent" being contained in the service agreement. Southern Natural Gas Company filed a similar answer.

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<sup>1</sup> Mississippi Valley's motion is limited to United's increased rates insofar as they apply to its own purchase and those of the other suppliers, Texas Gas Transmission Corporation and Southern Natural Gas Company. Memphis' motion is limited to the increased rates to its supplier, Texas Gas and that of the City of Jackson to the increased rates to its supplier, Mississippi Valley.

Mississippi Valley Gas Company and City of Memphis, Memphis Light, Gas and Water Division, filed similar answers to the "Motion of United Gas Pipe Line Company to Dismiss Motion of Mississippi Valley Gas Company to Reject, Cancel and Dismiss Rate Filings in Part." United filed a "Reply of United Gas Pipe Line Company to the 'Answer' of Mississippi Valley Gas Company and City of Memphis, *et al.*, to United's Answer to Mississippi Valley's Motion to Dismiss."

Willmut Gas and Oil Company, on the basis of the *Mobile Case*, and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348, filed a "Motion to Reject, Cancel and Dismiss Rate Filings Insofar as they purport to Increase the Rates for Sales of Gas to Willmut Gas and Oil Company to Prohibit Said Increased Rates From Becoming Effective, and to Require Refund of Increases Paid". Mobile Service Corporation, which had heretofore filed its Petition of Intervention and Answer to the Application for increased rates filed by United to take effect on November 1, 1955, filed an Amendment to said Petition of Intervention and Answer, reinforcing, in effect, its previous position by the decision in the *Mobile Case*.

The proposed motions to reject the increased rate filings and to cancel and dismiss the rate increase proceedings in the light of the recent *Mobile* and *Sierra Pacific* decisions raise questions which are not answered conclusively by the responses to such motions.

The Commission *finds*:

It is appropriate for the proper administration of the Natural Gas Act that oral argument be had before the Commission concerning the matters involved in and the issues presented by the motions to reject the increased rate filings and to cancel and dismiss the rate proceedings filed herein.

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The Commission orders:

- (A) Oral argument be had before the Commission on May 25, 1956 at 10:00 a.m. (EDST), in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., concerning the matters involved in and the issues presented by the said motions to reject the increased rate filings and to cancel and dismiss the rate proceedings.

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- (B) Parties to this proceeding who intend to participate in the oral argument shall notify the Secretary of the Commission on or before May 14, 1956, of such intention and of the time requested for presentation of their arguments.

By the Commission.

LEON M. FUQUAY,  
*Secretary.*

This is certified to be a true copy of the original.

LEON M. FUQUAY

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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Opinion No. 295

Docket No. G-9547

In the Matter of

UNITED GAS PIPE LINE COMPANY

Opinion and Order Denying Motions

(Issued October 2, 1956)



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(Issued October 2, 1956)

On September 30, 1955, United Gas Pipe Line Company (United) filed revised sheets to its FPC Gas Tariff, to become effective November 1, 1955, providing, among other things, increased rates for sales of natural gas subject to the jurisdiction of the Commission. The Commission, by order issued October 26, 1955, suspended until April 1, 1956, all of such revised tariff sheets, except those covering the sale of gas for resale for industrial use only.

Hearings in respect to these increased rate proposals were commenced on January 6, 1956, but have not been concluded. United has, however, presented its complete case in direct support of the increased rates which are herein involved—and the cross-examination of all but one of United's witnesses has been completed.

Pursuant to appropriate motion of United, the suspended tariff sheets became effective as of April 1, 1956.

Mississippi Valley Gas Company (Mississippi Valley), Memphis Light, Gas and Water Division jointly with the City of Memphis, Tennessee (Memphis), and the City of Jackson, Mississippi, active participants in this proceeding, filed, respectively, on March 22 and 28, and April 2, 1956, motions<sup>1</sup> to (a) prohibit United's increased rates from becoming effective April 1, 1956, (b) reject in part such increased rates, and (c)

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<sup>1</sup> Mississippi Valley's motion is limited to United's increased rates insofar as they apply to Mississippi Valley's own purchases and those of its other suppliers, Texas Gas Transmission Corporation and Southern Natural Gas Company. Memphis' motion is limited to the increased rates to its supplier, Texas Gas, and that of the City of Jackson to the increased rates to its supplier, Mississippi Valley.

order refunds under United's increased industrial use rates which were not suspended and which therefore became effective on November 1, 1955. These several motions are based on the allegation that United's tariff filings of September 30, 1955, constituted unilateral changes in the "contractual rate" which are prohibited by the decision in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332.

United filed, on March 28 and April 6 and 9, 1956, answers to the above motions, alleging, *inter alia*, that (a) its service agreements with these movants grant either party the right to seek changes in accordance with the Natural Gas Act; and (b) the tariff, including the form of service agreement, is *ex parte* and may be changed unilaterally. Southern Natural Gas Company (Southern Natural), on March 30, 1956, and Texas Gas Transmission Corporation (Texas Gas), on April 2 and 5, 1956, filed answers in support of United's position that "mutual consent" to changes in rates was contemplated by and provided for in United's service agreements with them.

Mississippi Valley, on April 9, 1956, filed "Answer to Motion of United Gas Pipe Line Company to Dismiss Motion of Mississippi Valley Gas Company to Reject, Cancel and Dismiss Rate Filings in Part." Memphis filed a similar answer on April 16, 1956. United, in turn, filed replies on April 19 and 20, 1956, respectively, to the "Answers" of Mississippi Valley and Memphis.

Willmut Gas and Oil Company (Willmut), on the basis of the *Mobile* case, *supra*, and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348, filed, on April 13, 1956, its motion to (a) reject United's increased rates as to Willmut, (b) prohibit their becoming effective, and

(c) require the refund of the increase in rates already paid by Willmut to United. Willmut's motion was answered by United on April 23, 1956.

Mobile Gas Service Corporation (Mobile Gas), which had theretofore filed its Petition of Intervention and Answer in opposition to the filing of United for increased rates, filed, on April 13, 1956, an amendment to its said petition, whereby, in reliance upon the decision in the *Mobile* case, it sought to fortify its position. This filing by Mobile Gas is tantamount to a motion to reject United's increased rates as to it. United filed an answer to the amendment of Mobile Gas on April 23, 1956.

There is also outstanding a joint petition by Tyler Gas Company (Tyler Gas) and the City of Tyler, Texas (Tyler), filed October 21, 1955, in this proceeding, for an order rejecting United's increased rates as to Tyler Gas Company. In their petition Tyler Gas and Tyler placed reliance upon the *Mobile* and *Sierra* cases, then before the Supreme Court on appeal, in support of the petition for rejection. On October 26, 1955, United filed a motion to dismiss and answer to this joint petition. By

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letter, dated March 26, 1956, after decisions in the *Mobile* and *Sierra* cases, counsel for Tyler renewed its prior contention as to the illegality of United's increased rates which are the subject of the proceedings in Docket No. G-9547, as well as United's rates involved in the proceedings in Docket Nos. G-2019 and G-2210.

Oral argument was heard by the Commission on May 25, 1956, on the aforesaid several motions and answers.

Although Tyler Gas and Tyler participated in such argument in the proceedings in Docket No. G-9547, further argument was had before the Commission on July 13, 1956,



on the petition filed by Tyler Gas and Tyler in that proceeding—and upon similar motions and petitions filed by these parties in the proceedings in Docket Nos. G-2210 and G-10592. We have separately considered these several motions and petitions of Tyler Gas and Tyler and a separate order disposing of them is being issued concurrently herewith. Accordingly, in this instant order we shall not give further consideration to the petition of these parties filed in Docket No. G-9547.

The several movants herein premise their motions solely upon the decisions of the Supreme Court in the *Mobile* and *Sierra* cases. In those cases, the Court had before it the narrow question of the right of a natural-gas company or a public utility by unilateral action to change a definite and specific rate fixed for a definite and specific term of years by contractual agreement. The Court stated the question presented in the *Mobile* case specifically as follows:

“The question presented in this case is whether under the Natural Gas Act, . . . a regulated natural gas company furnishing gas to a distributing company under a long-term contract may, without the consent of the distributing company, change the rate specified in the contract simply by filing a new rate schedule with the Federal Power Commission.”

The Court held that a specific contract rate so fixed could not be changed by a unilateral filing pursuant to section 4 (d) of the Natural Gas Act.

In the *Mobile* case, the rate for the gas was specifically stated and firmly fixed for the full 10-year term of the contract. Nothing was contained in the contract under scrutiny in that case which indicated either directly or by implication that the rate could be changed by unilateral action of United. It was a static rate for 10 years,

and, unless the purchaser consented to a change in the rate, United was bound by obligations of the contract. Such was the view of the Supreme Court on the facts in the *Mobile* case.

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In its opinion in the *Mobile* case the Supreme Court stated:

“Section 4 (d) [of the Natural Gas Act] provides not for the filing of ‘proposals’ but for notice to the Commission of any ‘change . . . made by’ a natural gas company . . . If the purported change is one the natural gas company has the power to make, the ‘change’ is completed upon compliance with the notice requirement and the new rate has the same force as any other rate—it can be set aside only upon being found unlawful by the Commission.”

Elsewhere, the Court recognized the powers of the Commission under section 4 (e) of the Act—

“. . . (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective.”

After careful consideration of the record herein—particularly the agreements between United and its customers, including the several petitions and motions, the answers thereto and the arguments in support thereof, we are of the opinion that the rate filing by United, which is the subject of this proceeding, is one which United had the right and power to make pursuant to the provisions of section 4 (d) of the Natural Gas Act. Accordingly, this proceeding was properly instituted pursuant to section 4 (e) of the Act. We are of the further opinion that the decision of the Supreme Court in the *Mobile* case does

not require a contrary conclusion. Rather, we conclude that the filing of United and this proceeding relating thereto are wholly consistent with the holdings of the Court in that case and in the *Sierra* case.

As noted before, the increased rates, which are the subject of this proceeding—and the target of the motions and petitions here involved—were filed by United on September 30, 1955. Our concern, therefore, is with the service agreements (contracts) between United and its customers as in effect at that date<sup>2</sup> and whether thereunder United had the “power to make” the change in rates.

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The provisions of the several service agreements between United, as seller, and Mississippi Valley, Southern Natural, Texas Gas, and Willmut, as purchasers, are materially different from the aforementioned agreement between United and Mobile which was the subject of consideration by the Supreme Court in the *Mobile* case. Unlike the contract between Mobile and United which was before the Court, the pertinent agreements between United and Mississippi Valley, Southern Natural, Texas Gas and Willmut, as in effect on September 30, 1955, do not fix an absolute or static rate. Rather, these latter agreements simply provide that the rate to be charged shall be the effective rate on file from time to time with the Commission.

The pricing provision in United's standard form of service agreement, as contained in its tariff, which is the

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<sup>2</sup> The pertinent agreement with Mississippi Valley is dated March 25, 1955; Mobile's agreement is dated January 1, 1936, as amended; Southern Natural's are dated May 7, 1951 and September 30, 1952; Texas Gas' agreements are dated April 16, 1945, and August 11, 1952; and the several agreements of Willmut are dated September 7, 1954, February 28, 1955 and May 6, 1955.



form of agreement between United and these purchasers, reads as follows:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedules [here is inserted the designation of the appropriate schedules as contained in the filed tariff], or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof."

The words "or any effective superseding rate schedules on file with the Federal Power Commission" clearly contemplate the understanding and intent of the contracting parties that changes could properly be made by United in the rates contained in the applicable rate schedules in effect at the time of execution of the service agreement. It is equally clear that it was the understanding and intent of the parties that the purchaser would pay the rates set out in the applicable rate schedules effective from time to time and that changes could be made therein by United under the procedures established under section 4 of the Act. This is the only reasonable interpretation that can be given to the above-quoted contract provision as an expression of the intent of the contracting parties. Otherwise the quoted phrases are meaningless and surplusage. But contracts—like statutes—will and must be read to give meaning to the whole, and are presumed to fully express the intent of the parties.

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It follows too that the changes contemplated by the agreements were unilateral changes to be proposed by United. The purchasers, although having a right to file

a complaint against the rates being charged, have no correlative right under the statute to file a schedule of proposed changes in the seller's rates. This is a right reserved to the natural-gas company providing the service. Knowledge of these facts must be attributed to the parties to the agreements.

Unless the language of the agreements be interpreted as we have, it can only be concluded that by such language the parties intended merely that the first effective rates would continue in effect until changed by the Commission under the provisions of section 5 (a) of the Natural Gas Act. Such an interpretation, however, would imply that the parties were merely agreeing to comply with the Act, and the orders of the Commission thereunder. Since they are under obligation to so comply and subject to penalties if they do not, such an interpretation would deprive the contractual provisions of meaning and substance. This would be improper and should not be done.

At the time of the filing by United on September 30, 1955, of the increased rates and charges which are the subject of this proceeding there was in effect a so-called "pre-existing contract" between United and Mobile, dated January 1, 1936, which had been amended by a number of supplemental agreements. This contract, as particularly amended by a supplemental agreement dated July 30, 1946, was the subject of the Court's consideration in the *Mobile* case. However, prior to the subject filing by United, Mobile and United on June 6, 1955, entered into a fully superseding agreement. This new agreement was in the standard form of service agreement, as set forth in United's tariff and containing the language heretofore discussed.

Although dated June 6, 1955, the superseding agreement of Mobile and United did not become effective until

February 8, 1956, upon the completion by United of certain additional facilities necessary to provide Mobile the additional and expanded service contemplated by the new contract. The fact that this agreement did not actually become operative until after United's filing of September 30, 1955, does not affect at all the views heretofore expressed as to the apparent understanding and intent of the contracting parties entering into this standard form of service agreement. Actually, this purpose and intent

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is even more deliberately indicated by the actions of Mobile. Not only did Mobile enter into the above-mentioned agreement of June 6, 1955, prior to United's filing, but, on November 10, 1955—subsequent to United's filing—Mobile entered into a new agreement containing the identical pricing provision heretofore quoted, which is standard in the tariff form of service agreement. It is even more significant that on July 2, 1956—after the decision of the Supreme Court in the *Mobile* case and after the arguments before us on the several petitions and motions here involved (in which Mobile did not participate)—Mobile entered into a new agreement with United which supersedes all prior agreements. This latest—and presently effective contract between Mobile and United—like the prior agreements of June 5 and November 10, 1955, clearly evidences the intent, purpose and agreement of the parties that United should have the power to make filings with the Commission of changes in the rates and charges in effect from time to time.

In addition to the previously mentioned agreement in standard tariff service agreement form, United and Texas Gas also have an effective so-called "pre-existing contract", which, pursuant to section 154.85 of the Commis-



sion's Regulations Under the Natural Gas Act, has been restated. The basic contract, dated April 16, 1945 (United's Rate Schedule FPC No. 78-A), provided for a base price of 8 cents per Mcf, with a provision for adjustment in the event of an increase or decrease in taxes related to the production or sale of gas. However, on the same date, April 16, 1945, United, by unilateral action—without written concurrence of the other party—advised by letter that it would accept a base price of 5.7 cents per Mcf, with a provision for adjustment in the event of an increase or decrease in taxes related to the production or sale of gas. So far as this record shows, Texas Gas continued to pay the rates provided in the contract of April 16, 1945, as so amended, until August 3, 1952, when United's conversion tariff, submitted in compliance with the Commission's Order No. 144, Docket No. R-107, became effective. (Order No. 144 added sections 154.1-154.86 to the Commission's Regulations Under the Natural Gas Act [18 CFR 154.1-154.86]). The conversion tariff so filed occasioned a change in the rates previously paid United by Texas Gas. Since that time Texas Gas has continued to pay—without protest—the rates provided in the applicable rate schedules effective from time to time as filed with the Commission.

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Further, there is to be considered the actions of the parties under the contracts. Excepting only the action of Mobile under a prior and superseded contract, which was the subject of the Supreme Court's decision in the *Mobile* case cited before, and the petition of Tyler Gas and Tyler, which is the subject of a separate consideration and order, not one of the many purchasers under contracts with United contended prior to the decision in the *Mobile* case that the rate filing of United here under consideration—

or any prior change in rates—was in contravention of the provisions of the contract. Nor did they contend that United did not have the right under their several contracts to make a unilateral change in the first effective price thereunder—or that the changes made were contrary to the purpose and language of the contracts. Since each customer was directly informed of United's filing now under consideration, as well as previous rate increase filings, and Mobile and Tyler Gas were the only customers who, prior to the *Mobile* decision, contended that such changes were contrary to the terms of their agreements with United, it can only be concluded that all other customers were of the belief that their agreements gave United the power to make unilateral changes in the existing rates.

This view is supported by Southern Natural and Texas Gas. These two customers, both in their answers in support of the position of United in this instant matter and in oral argument before us, have stated that it was the understanding and intent of the contracting parties to grant United the power to make changes in rates pursuant to section 4(d) of the Natural Gas Act, without waiver, however, of the right of the purchasers to oppose such changes in proceedings before the Commission for the purpose of testing the reasonableness and justness thereof. And these parties, as well as practically all other customers of United, have acted through the years in accordance with this contractual purpose and intent.

Section 235 (e) of the Restatement of the Law of Contracts states that:

“If the conduct of the parties subsequent to a manifestation of intention indicates that all the parties placed a particular interpretation upon it, that meaning is adopted if a reasonable person could attach it to the manifestation.”

With only four recent exceptions, all of United's customers have given a uniform interpretation to the price provision of United's service agreement form—and their conduct has been in accord therewith.

The instant complaints of Mississippi Valley, Memphis Light, Gas and Water Division, and the City of Memphis with respect to the contracts of their suppliers, Southern Natural and Texas Gas, with United presents an anomalous situation. The contracting parties are in complete agreement as to the meaning and purpose of their contracts. Yet, these third parties—

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these strangers to the contracts—seek to impose upon the contracting parties a construction of the contracts which is wholly opposed to the purpose and intent of the contracting parties and the language of the contracts. We recognize that there is serious question as to the standing of these strangers to the contracts to challenge the provisions thereof and the conduct of the parties thereunder, but even if they do have standing to challenge the contracts of others their contentions are without merit and not supported.

Under the *Mobile* and *Sierra* decisions, parties may still agree between themselves to the filing of changes in rates such as proposed by United in this proceeding. There is no interdict in either the *Mobile* or the *Sierra* cases against such an agreement between the parties. The above-quoted language from United's service agreements with the movants and others clearly indicates that mutual consent is provided in the service agreement to the filing by United for a change in rates and charges, pursuant to section 4 (d) of the Natural Gas Act. The service agreements provide that the rates on file shall be the effective rates. United's proposal for increased rates in this proceeding does not



constitute a prohibited unilateral change of a contract, for the contract language supplies the purchaser's assent to United's filing of a change in rates.

The Commission further *finds*:

No good cause exists for the Commission to grant the motions filed herein by Mississippi Valley Gas Company, Memphis Light Gas and Water Division and the City of Memphis, Tennessee, the City of Jackson, Mississippi, Willmut Gas and Oil Company, or to grant the request of Mobile Gas Service Corporation, styled an Answer and Amendment thereto, which in effect constitutes a motion to reject.

The Commission *orders*:

The aforesaid motions filed herein by Mississippi Valley Gas Company, Memphis Light, Gas and Water Division and the City of Memphis, Tennessee, the City of Jackson, Mississippi, Willmut Gas and Oil Company, and the Answer and Amendment to Answer, which constitutes a motion to reject, filed herein by Mobile Gas Service Corporation, be and they are each hereby denied.

By the Commission. Commissioner Kline not participating.

LEON M. FUQUAY,  
Leon M. Fuquay,  
*Secretary.*

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Received October 26, 1956

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**Joint Application for Rehearing of Opinion No. 295 and Order  
Issued October 2, 1956**

Mississippi Valley Gas Company, the City of Memphis,  
and the Memphis Light, Gas and Water Division, being

aggrieved by the order of the Federal Power Commission issued October 2, 1956, and Opinion No. 295, jointly apply for rehearing of said Opinion and order pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure. By said Opinion and order, the Commission denied the motion of Mississippi Valley Gas Company (Mississippi Valley) to prohibit the increased rates of United Gas Pipe Line Company (United) from becoming effective as to Mississippi Valley, Texas Gas Transmission Corporation (Texas Gas), and Southern Natural Gas Company (Southern Natural); to reject such increased rates so far as they apply to Mississippi Valley, Texas Gas, and Southern Natural and for refunds under increased industrial use rates which became effective on November 1, 1955; and further

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denied the joint motion of the City of Memphis and Memphis Light, Gas and Water Division for similar relief in regard to increases in rates to Texas Gas from United.

**ERRORS COMPLAINED OF**

This application for rehearing is based on the following grounds:

1. The Commission erred in holding that the rate filing by United, which is the subject of this proceeding, "is one which United had the right and power to make pursuant to the provisions of Section 4(d) of the Natural Gas Act." (Opinion No. 295, mimeo ed., p. 4)
2. The Commission erred in holding that the instant proceeding was properly instituted pursuant to Section 4(e) of the Act. (Ibid.)
3. The Commission erred in holding that the decision of the Supreme Court in *United Gas Pipe Line Company*

v. *Mobile Gas Service Corporation*, 350 U.S. 332, does not require a conclusion contrary to that reached by the Commission in said Opinion No. 295, and accompanying order. (Ibid.)

4. The Commissioner erred in holding that United's rate filing in this proceeding, and the proceeding relating thereto, "are wholly consistent with the holdings" of the Supreme Court in the *Mobile* case and in *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348. (Ibid.)

5. The Commission erred in holding that the provisions of the several service agreements (contracts) between United, as Seller, and

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Mississippi Valley, Southern Natural, and Texas Gas, as Purchasers, are "materially different" from the agreement between United and Mobile Gas Service Corporation which was the subject of consideration by the Supreme Court in the *Mobile* case (Opinion No. 295, mimeo. ed., pp. 4-5). The rate between United and Mobile was expressed in an effective rate schedule on file with this Commission and, as the *Mobile* opinion makes clear, was subject to being superseded by a new rate schedule made effective in the manner contemplated by the Act, i.e., either by agreement between the parties or upon proceedings under Section 5(a) of the Act. Thus, in the *Mobile* case, as in the instant case, the purchasers were obligated to pay for gas under the seller's existing rate schedule, or any effective superseding rate schedule on file with the Commission.

6. The Commission erred in holding that an interpretation of the contracts between United and its purchasers which would imply that the parties were agreeing to comply



with the Natural Gas Act and the orders of the Commission thereunder would deprive the contractual provisions of meaning and substance. (Opinion No. 295, mimeo. ed., p. 6) It is common practice to include in important contracts provisions expressing agreement to the undertaking of obligations which the law would imply even if the obligation were not expressly set out in the contract.

7. The Commission erred in considering the actions of the purchasers under contracts with United as a factor bearing upon the decision of the issue raised by the motions of the applicants for rehearing

### 2799

herein. The fact that such purchasers were under the mistaken impression that United had a legal right, regardless of contract terms, to propose a rate increase to the Commission at any time it chose, is completely irrelevant to a decision on the question of the legal effect of the agreements in their purchase contracts under the *Mobile* decision. (Opinion No. 295, mimeo. ed., pp. 7-8).

8. The Commission erred in concluding that all other customers of United excepting *Mobile* and *Tyler Gas* were of the belief that their agreements gave United the power to make unilateral changes in the existing rates (Opinion No. 295, mimeo. ed., p. 8), there being absolutely no evidence before the Commission on which to base such conclusions.

9. The Commission erred in holding that the position in this case of *Southern Natural* and *Texas Gas* was that it was their understanding and intent to grant United power to make changes in rates pursuant to Section 4(d) of the Natural Gas Act (Opinion No. 295, mimeo. ed., p. 8). Nowhere in the pleadings and evidence or in the oral arguments of any of the parties to this case, including United,

is there a statement that United has the power under its service agreement to make changes in its rates. The most that any party opposing the motions has said is that United has power to file for a rate change, or, in other words, to propose a rate change to the Commission. The distinction between proposing a rate change and making a rate change is the precise point upon which the opinion in the *Mobile* case turned.

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10. The Commission erred in holding that Mississippi Valley, Memphis Light, Gas and Water Division, and the City of Memphis are "strangers to the contracts" involved in this case. (Opinion No. 295, mimeo. ed., pp. 8-9). In the first place, Mississippi Valley is a signatory party to its contract for the purchase of gas from United, which is one of the contracts for which United is now seeking an increase in rates contrary to the procedures authorized by the Act. As to United's contracts with Texas Gas, the Memphis Light, Gas and Water Division and Mississippi Valley, together with all other customers of Texas Gas, have already agreed by means of a consent order approved by this Commission in Docket No. G-2017, issued November 17, 1955, that any increase in rate which Texas Gas incurs from this proceeding shall be automatically and immediately passed on to them. As a result they are the real parties in interest to the question now before the Commission, rather than the signatory party Texas Gas. In the second place, the Commission disregards the fact that the Natural Gas Act was passed for the benefit of consumers. In the third place, the Commission fails to recognize that the question presented by the motions involves the Commission's jurisdiction as provided by the Natural Gas Act, and as parties to this proceeding, the applicants for rehearing have a right to rely on and invoke the provisions of the Natural Gas Act.

11. The Commission erred in holding that petitioners seek to impose upon the contracting parties a construction of their purchase contracts which is wholly opposed to the purpose and intent of the con-

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tracting parties and the language of the contracts. (Opinion No. 295, mimeo. ed., p. 9)

12. The Commission erred in holding that under the *Mobile* and *Sierra* decisions, parties may still agree between themselves to the filing of changes in rates "such as proposed by United in this proceeding." (Opinion No. 295, mimeo. ed., p. 9) This error is emphasized by the statement in the same paragraph of the Commission's opinion (page 9) that United's service agreement provides mutual consent "to the filing by United for a change in rates and charges, pursuant to Section 4(d) of the Natural Gas Act" (emphasis supplied), and such filing is recognized as being "United's proposal for increased rates in this proceeding. . . ." (Opinion No. 295, mimeo. ed., p. 9). The procedure of filing a *proposal* for a change in rates was precisely what the United States Supreme Court held to be erroneous in the *Mobile* case.

13. The Commission erred in holding that the service agreements between United and its purchasers "provide that the rates on file shall be the effective rates." (Opinion No. 295, mimeo. ed., p. 9) There is no language in the service agreements, in the pleadings of the parties on this motion in the evidence or in the arguments of the parties at the hearing before the Commission, to substantiate that statement. No one of the parties has contended that an agreement to pay in accordance with "any effective superseding rate schedules" means that United could file any rates which it pleased and that the very act of filing



such rates made them effective as between the parties. It is abundantly clear, as

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repeatedly stated by the parties to United's rate contracts, that they considered the filing by United for a change in rate to be a mere proposal, which did not become finally effective unless and until the Commission granted the increase. No one has claimed, not even United, that the mere filing of the new rate schedule made it an effective superseding rate schedule.

14. The Commission erred in holding that "United's proposal for increased rates in this proceeding does not constitute a prohibited unilateral change in the contract." (Ibid.) This statement in the Commission's opinion shows perhaps more clearly than any other the failure of the Commission to give effect to the *Mobile* decision of the Supreme Court in deciding the issue before it. The whole significance of the *Mobile* decision is the fact that the Commission has no power under Section 4 to consider a "proposal for increased rates." The Commission in its opinion is clearly still considering Section 4 of the Act as a rate-changing procedure, in which the seller proposes, the purchaser opposes, and the Commission disposes of the pending rate increase. The Supreme Court held that the new rate must be fixed, established and valid in itself, before the Commission can initiate a proceeding under Section 4(e), not to change the rate, but to determine whether the new, agreed-to rate is reasonable. No party to this proceeding has contended that United has any right to fix or establish the particular new rates which it here seeks. Instead, reliance is placed upon the power of this Commission to establish a new rate—a power which the *Mobile* case clearly held it does not have in a

### 2803

proceeding under Section 4(e) of the Act.

15. The Commission erred in holding that the provisions of the Natural Gas Act for changes in rates could be altered by private contract and jurisdiction thereby conferred upon the Commission to act on proposals to change contract rates under Section 4(e) of the Act.

16. The Commission erred in finding that no good cause exists for it to grant the motions filed by the applicants for rehearing herein in that the finding is not supported by substantial evidence; is contrary to the substantial evidence of record, and is erroneous as a matter of law.

17. The Commission erred in ordering that the said motions filed by applicants for rehearing herein be denied, for each and all of the reasons set forth in paragraphs 1 to 16, inclusive, hereof.

WHEREFORE, the applicants for rehearing respectfully pray:

1. That the Commission grant a rehearing of its Opinion No. 295 and order issued October 2, 1956;

2. That upon such rehearing the Commission reconsider its order denying the motions of applicants herein, and that said motions be granted;

3. That upon the granting of said motions United be required to refund all increases in rates together with interest, which it has collected since November 1, 1955 with respect to industrial use rates and since the end of its suspension period on April 1, 1956 as to all other rates; and

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4. That applicants have such other and further relief as they may be entitled to in the premises.

• • • • •

2811

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

Docket No. G-9547

In the Matter of

UNITED GAS PIPE LINE COMPANY

Order Denying Applications for Rehearing

(Issued November 23, 1956)

Mississippi Valley Gas Company, the City of Memphis, and the Memphis Light, Gas and Water Division, jointly (Joint Applicants), and Willmut Gas and Oil Company (Willmut), filed on October 26, 1956, applications for rehearing of the Commission's Opinion No. 295, and accompanying order, issued October 2, 1956.

Willmut alleges certain specifications of error, which are essentially the same as those heretofore alleged in its motion which was a subject of consideration in said opinion and order. In support of its application, Willmut relies upon the arguments made in the aforementioned motion and a brief previously filed in support thereof. The points of alleged error do not present any issues which have not been heretofore fully considered by the Commission. We find nothing in the application for rehearing which justifies or requires a disposition of these issues in a manner other than that heretofore made in our Opinion No. 295 and accompanying order.

Similarly the application for rehearing filed by the Joint Applicants, while alleging that the Commission erred in



certain specific findings and conclusions expressed in the Opinion No. 295 and order, is based upon contentions which are essentially the same as those specifically dealt with in said opinion and order in the disposition of the issues raised by the several pleadings of these Joint Applicants heretofore considered in this proceeding. Accordingly, we do not find it necessary to review herein the findings and conclusions expressed in the opinion and order. Nor do we find anything in this joint application which justifies or requires a change in the views set forth in the opinion and order.

The Commission *finds*:

- (1) The applications for rehearing of our Opinion No. 295 and accompanying order issued on October 2, 1956, set forth no new facts and no principles of law which either were not fully considered by the

## 2812

Commission when it adopted said opinion and order or which having now been considered warrant any change in or modification of such order. All contentions and objections not specifically discussed herein have been considered and found either without basis in law or support in fact, but are not sufficiently material to warrant individual treatment or have been adequately disposed of otherwise.

- (2) Apart from our consideration of the applications for rehearing, further consideration of said Opinion No. 295 indicates that it should be amended as hereinafter ordered to include an omission therefrom.

The Commission *orders*:

- (A) The aforementioned Opinion No. 295, as issued on October 2, 1956, is hereby amended to add the following, which shall follow page 7 thereof (mimeo. ed.):

"In addition to the standard form of service agreement, dated September 30, 1952, between United and Southern Natural Gas Company, which has been previously discussed, there was also in effect on September 30, 1955, another agreement between United and Southern Natural, dated May 7, 1951. The latter is also a so-called 'pre-existing contract' covering the sale of gas produced in the Carthage (Texas) Field and in the Floyd Field in Louisiana, which, pursuant to section 154.85 of the Commission's Regulations, has been restated. So far as this record shows, Southern Natural continued to pay the rates and charges provided in the contract of May 7, 1951, until August 3, 1952, when United's conversion tariff, submitted in compliance with the Commission's Order No. 144, Docket No. R-107, became effective. The conversion tariff so filed occasioned a change in the rates previously paid United by Southern Natural under this contract. Since that time Southern Natural has continued to pay the rates provided in the applicable rate schedules effective from time to time as set forth in United's FPC Gas Tariff filed with the Commission.

"The contract of May 7, 1951, between United and Southern Natural was superseded in its entirety by a new agreement between these parties, dated November 1, 1955, which is in United's standard form of service agreement and contains the standard pricing provision heretofore discussed. The agreement of November 1, 1955, was subsequently superseded by the presently effective agreement between these parties dated March 8, 1956, which is also in the standard form of United and contains the standard pricing provision."

(B) The applications for rehearing of our Opinion No. 295 and accompanying order as filed on October 26, 1956, by Mississippi Valley Gas Company, the City of Memphis, and the Memphis Light, Gas and Water Division, jointly, and Willmut Gas and Oil Company are each hereby denied.

By the Commission.

LEON M. FUQUAY,  
Leon M. Fuquay,  
*Secretary.*



[fol. 249]

[File endorsement omitted]

[fol. 250]

No. 13666

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, AND MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

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MOTION OF UNITED GAS PIPE LINE COMPANY TO INTERVENE  
IN SUPPORT OF THE ORDER OF THE FEDERAL POWER COM-  
MISSION—Filed January 17, 1957

To the United States Court of Appeals for the District  
of Columbia Circuit and the Honorable Justices There-  
of:

Now Comes United Gas Pipe Line Company (United)  
and respectfully moves this Court for permission to inter-  
vene herein in opposition to the Petition for Review of  
Memphis Light, Gas & Water Division, the City of Mem-  
phis, Tennessee (hereafter called Memphis) and Missis-  
sippi Valley Gas Company (Mississippi Valley), and in  
support of the correctness of the decision and order of the  
Federal Power Commission (Commission) sought to be  
attacked herein, and as required by Rule 38(f) of the Rules  
of this Court, shows as follows:

[fol. 251]

1.

United is a natural gas company subject to the jurisdic-  
tion of the Commission under the Natural Gas Act (Act),  
and the matters and issues sought to be raised herein by  
Petitioners involve the relationship of United and Peti-  
tioner Mississippi Valley and United and Texas Gas Trans-  
mission Corporation (Texas Gas), and Southern Natural

Gas Company (Southern Natural), as well as United's rights, powers and duties to the Commission and its customers Mississippi Valley, Texas Gas and Southern Natural, as well as Respondent's power, authority and jurisdiction of matters confided to its administrative regulation by the Act, including the terms, conditions and provisions of service and sales of natural gas by United to Mississippi Valley, Texas Gas and Southern Natural, which service and sale is made pursuant to the provisions of the Act and Regulations lawfully promulgated by the Commission pursuant to authority contained in the Act and the Regulations of the Commission thereunder.

## 2.

Pursuant to Order 144 the Commission promulgated Regulations contained in Part 154 of its Regulations which in general required the conversion from common law form contracts as the repositories of terms and conditions of service and rate schedules, to a tariff form of rate schedules, service agreements, General Terms and Conditions, etc., and which set up the form, scope and content of rate schedules on the one hand, and provisions governing the [fol. 252] terms and conditions of service on the other, and which permitted the retention of certain portions of the formal prior contracts as converted service agreements consistent with the requirements and prohibitions of such Regulations. These Regulations were by this Honorable Court held and adjudged to be lawfully issued under authority contained in the Act and to be valid Regulations in the case of *United Gas Pipe Line Company v. Federal Power Commission* (1950) 86 App. D. C. 314, 181 F. 2d 796, cert. den. 340 U. S. 827.

In accordance with the provisions of such judgment and decision by this Honorable Court, United filed its Conversion Tariff in accordance with such Regulations; and the Commission permitted the same to be filed and become effective.

## 3.

Mississippi Valley is a direct customer of United receiving service in accordance with a Service Agreement ex-

ecuted upon the form and having the content stipulated by such Regulations, the rates being governed by and in accordance with current filed rate schedules, the form of which is stipulated by said Regulations.

## 4.

Memphis is not a customer of United, and United does not at any time or place sell or deliver natural gas to Memphis.

## 5.

Below, Memphis alleged that it purchased natural gas from Texas Gas, which purchases a portion of its requirements from United. Mississippi Valley also alleged that it purchased part of its requirements from Texas Gas and Southern Natural, each of whom purchase a portion of their requirements from United.

United makes two sales to Texas Gas, one upon a Service Agreement executed pursuant to the Regulations in part 154 above described, the other delivery being pursuant to a Converted Contract Service Agreement pursuant to the terms of the Regulations above described. United makes sales to Southern Natural under two certain Service Agreements executed pursuant to the Regulations above described. Neither Memphis nor Mississippi Valley are parties to or have any privity with the Service Agreements executed pursuant to such Regulations by which United sells and delivers natural gas to Texas Gas and Southern Natural.

## 6.

The Service Agreements between United, Mississippi Valley, Texas Gas and Southern Natural contain provisions substantially as follows:

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule (here is inserted the applicable tariff description), or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate



schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof."

With respect to such language United alleged before the Commission, Texas Gas and Southern Natural by their Answers agreed, and the Commission found that it was the [fol. 254] intent and meaning of such language and was so understood by the parties, that such provision contemplated freedom and right by United, as Seller, to file with the Commission, pursuant to Section 4(d) of the Act notice of change in the rates where change was reasonably required to make rates just and reasonable and preserve fully the proper performance of the duties and services of United and others similarly situated as a natural gas company under the Act, with consequent freedom and right in Texas Gas, Southern Natural and Mississippi Valley, and all others similarly situated, to oppose and contest both the propriety and lawfulness of the noticed change in rates; that such language likewise gives the purchaser free access to the Commission to seek a change in tariff rates claimed to be unjust or unreasonable with the result that a change would supersede when made effective pursuant to Commission order. It was thus contended that there was mutual understanding and agreement that effective rates in a pending tariff were subject to notice of change filed with the Commission or to review upon complaint filed with the Commission, followed by full right to oppose and contest such change or review with the effective tariff rates superseded by whatever change in tariff rates might become effective pursuant to Commission review and determination of the contest, if any, of the propriety and lawfulness of the noticed change or of the complaint filed against pending tariff rates.

United further contended that such lawful Regulations having the force and effect of statutes were dealt with by all parties in the context and light of the understanding [fol. 255] then generally existent and prevalent that Section 4(d) of the Act provided a method with effective notice for the effectuation of a change of rates, and that Section 4(e) of the Act gave a series of discretionary

options and authorities to the Commission to review the same, and that thus the parties had agreed that United, Mississippi Valley, Texas Gas, and Southern Natural had agreed in the Service Agreements in contemplation of the law as they then understood and believed the law to exist, and that such Service Agreements must be construed in such light rather than in the light of the decisions subsequently rendered by the United States Supreme Court in the cases of *United Gas Pipe Line Company v. Mobile Gas Service Corporation* (1956) 350 U. S. 332, and *Federal Power Commission v. Sierra Pacific Power Company* (1956) 350 U. S. 348, upon which Petitioners based their position.

At the time Petitioners filed their Motions to the Commission, and since, there did not exist nor was service rendered by United to Mississippi Valley, Southern Natural, and Texas Gas under the same kind of contracts considered by the Supreme Court in *Mobile*.

## 7.

The Motions of Petitioners denied by the Commission in its Opinion and Order No. 295, here appealed from, were filed at Docket G-9547 while that Docket was in full panoply of hearing. The hearing in such Docket has not been concluded, nor determined, either by the decision of the Presiding Examiner, or by the Commission. Thus the Order and Opinion numbered 295 by the Commission is not a final order, but one entered in the uncompleted stream of the Administrative process.

[fol.256] Accordingly, questions are raised in this proceeding as to the jurisdiction of this Court, that is whether at this particular time Opinion and Order No. 295 of the Commission is an appealable order. There are also raised questions as to the power and capacity of Memphis to file the motion and maintain this proceeding respecting Service Agreements between United and Texas Gas, to which Memphis is not a party and with which it has no privity; and likewise there are raised issues as to the power and capacity of Mississippi Valley to file such motions and maintain this proceeding in respect of Service Agreements between United and Texas Gas, and United and Southern Natural, to which Service Agreements Mississippi Valley is not a party and with which it has no privity.

Subject thereto there is the question of the governance and control of the Regulations which this Honorable Court has held were lawfully promulgated by the Commission pursuant to authority under the Act, and the obligation of United in obedience thereto to comply therewith, which questions are inherent in the decision and order of the Commission, No. 295, appealed from and which affect and involve the maintenance and operation by United of its business as a natural gas company. This in turn involves the determination of the meaning and effect of the quoted language in the Service Agreements which United shows, as Opinion 295 properly holds, constituted a meeting of the minds and agreement between United and those who are its customers governing the method and determination within the ambit of such Regulations of what constitutes an effective superseding rate schedule, and a method by [fol. 257] which the same may be determined and become effective.

## 8.

For the foregoing reasons, it appears that United has a present, proper and manifest interest that will necessarily be affected by this cause, which makes it proper and reasonable for it to intervene in opposition to the Petitioners, in support of the Commission and for the purpose of asserting before this Honorable Court the correctness and propriety of the decision and order of the Commission appealed from, and the proper meaning and effect of the language in the service agreements between United and its customers, and for the raising of all questions hereinabove outlined.

## Prayer

Wherefore, premises considered, United moves and prays:

(1) That it be authorized and permitted by this Court to intervene in this cause in opposition to Petitioners and in support of the validity and correctness of the action and orders of Respondent.

(2) That it be authorized and permitted to raise and assert before this Court such questions and issues involv-



ing the jurisdiction of this Honorable Court of the capacity of Petitioners to file and maintain such Motions and this appeal; the questions as to whether they are the proper parties at interest, and the questions on the merits going to the establishment of the validity and correctness of said decision and order.

[fol. 258] (3) That in accordance with Rule 38(f) it be permitted to participate in the designation of the record.

(4) That pursuant to the Rules of this Court it be permitted to participate in all proceedings before this Court, including briefing, oral argument, and submission of the case; and

(5) For such other orders as this Court may deem proper in the premises.

United Gas Pipe Line Company, By /s/ C. Huffman Lewis, P. O. Box 1707, Shreveport, Louisiana, Its Attorney.

W. O. Crain, General Counsel, George D. Fiser, United Gas Building, P. O. Box 1407, Shreveport, Louisiana, Thomas Fletcher, Niels Esperson Building, Houston 2, Texas, C. Huffman Lewis, P. O. Box 1707, Shreveport, Louisiana, Counsel for Intervener.

[fol. 259] *Duly sworn to by C. Huffman Lewis, jurat omitted in printing.*

[fol. 260] Certificate of Service (omitted in printing).

[fol. 261]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

---

Before: Prettyman, Wilbur K. Miller and Washington,  
Circuit Judges, in Chambers.

ORDER ALLOWING UNITED GAS PIPE LINE COMPANY TO IN-  
TERVENE—January 31, 1957

Upon consideration of the motion of United Gas Pipe  
Line Company to intervene in support of the order of the  
Commission, and it appearing that no objections to said  
motion have been filed, it is

Ordered by the Court that United Gas Pipe Line Com-  
pany be, and it is hereby, allowed to intervene in the above  
case.

Per Curiam.

Dated: January 31, 1957.

Circuit Judge Wilbur K. Miller did not participate in  
the foregoing order.

[fol. 262] [File endorsement omitted]

[fol. 263]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

No. 13,666

MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

MOTION FOR LEAVE TO INTERVENE OF TEXAS GAS TRANSMIS-  
SION CORPORATION—Filed January 22, 1957

To the United States Court of Appeals for the District of  
Columbia Circuit, and the Honorable Judges Thereof:

Texas Gas Transmission Corporation (Texas Gas) re-  
spectfully moves this Honorable Court, pursuant to Rule  
38(f) of this Court, for leave to intervene in opposition to  
the petition for review filed herein on January 11, 1957  
by Memphis Light, Gas and Water Division (Memphis)  
Division), the City of Memphis, Tennessee (Memphis) and  
Mississippi Valley Gas Company (Mississippi Valley), and  
in support of the opinion and orders of the Federal Power  
Commission (Commission) which are sought to be reviewed  
and set aside in this proceeding. In support of this motion,  
Texas Gas respectfully states:

[fol. 264]

I

Texas Gas is a corporation organized and existing under  
the laws of the State of Delaware and having its principal  
place of business at 416 West Third Street, Owensboro,  
Kentucky.

Texas Gas, a natural gas company within the meaning  
of the Natural Gas Act, is primarily engaged in the busi-  
ness of transporting and selling natural gas in interstate  
commerce under authorizations granted by the Commis-



sion. The facilities operated by Texas Gas consist of a pipe-line system located in Texas, Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Indiana, Illinois and Ohio.

## II

Texas Gas purchases substantial quantities of natural gas from United Gas Pipeline Company (United). Petitioner, Memphis Division, purchases its entire supply of natural gas from Texas Gas. Petitioner, Mississippi Valley, purchases a portion of its natural gas requirements from Texas Gas.

## III

Opinion No. 295 and accompanying order, which is here sought to be reviewed by Petitioners, was issued by the Commission on October 2, 1956 in Docket No. G-9547. This proceeding involves an increase in the rates of United to its customers, including Texas Gas.

The petition for review before this Court involves an interpretation by Petitioners of the recent Supreme Court decision in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, 350 U. S. 332 (1956). It is claimed that, under the *Mobile* decision, United did not have the right to make its rate increase filing as to Texas Gas in Docket No. G-9547. This contention raises questions relating to the meaning and intent of the Service Agreements between United and Texas Gas. Petitioners were not and [fol. 265] and are not parties to those agreements.

## IV

Texas Gas, in addition to being a party intervenor in Docket No. G-9547, was permitted by the Commission to participate actively in the pleadings and oral arguments on the motions leading up to Opinion No. 295 and accompanying order.

Wherefore, in view of the foregoing, Texas Gas Transmission Corporation respectfully moves that it be granted leave to intervene in this proceeding and be made a party thereto, that it be permitted to participate in the designa-

tion of the record, file briefs, and take part in oral arguments, and for such other and further relief as may be just and proper.

Dated this 22nd day of January, 1957.

Christopher T. Boland, 821 Fifteenth Street, N. W.,  
Washington 5, D. C., Attorney for Texas Gas  
Transmission Corporation.

Of Counsel.

Gallagher, Connor & Boland, 821 Fifteenth Street, N. W.,  
Washington 5, D. C.

[fol. 266] *Duly sworn to by Christopher T. Boland, jurat  
omitted in printing.*

[fol. 267] Certificate of Service (omitted in printing).

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[fol. 268] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent,  
UNITED GAS PIPE LINE COMPANY, Intervenor.

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Before: Wilbur K. Miller, Fahy and Bastian, Circuit  
Judges, in Chambers.

ORDER ALLOWING TEXAS GAS TRANSMISSION CORPORATION TO  
INTERVENE—February 8, 1957

Upon consideration of the motion of Texas Gas Trans-  
mission Corporation for leave to intervene in the above

case, and it appearing that no objections to said motion have been filed, it is

Ordered by the Court that Texas Gas Transmission Corporation be, and it is hereby, allowed to intervene in the above case.

Per Curiam.

Dated: February 8 1957

Circuit Judge Miller did not participate in the foregoing order.

[fol. 269] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 13,666

MEMPHIS LIGHT, GAS AND WATER DIVISION, CITY OF  
MEMPHIS, TENNESSEE AND MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

MOTION OF SOUTHERN NATURAL GAS COMPANY FOR LEAVE TO  
INTERVENE—Filed February 2, 1957

Southern Natural Gas Company, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at Birmingham, Alabama, respectfully moves to intervene as a respondent in the above-entitled cause.

The order of the Respondent, Federal Power Commission, which is sought to be reviewed, and the petition for review directly relate, in part, to the construction which should be given to contracts between Movant and United Gas Pipe Line Company, under which United Gas Pipe Line Company sells natural gas in interstate commerce to



Movant for resale, and the proper application to said contracts of the principles stated in *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332, and *Pacific Gas and Electric Company v. Sierra-Pacific Power Co.*, 350 U.S. 348.

Intervention is sought on the grounds that the representation of Movant's interests by existing parties may be inadequate and that Movant will be bound, in respect of its contract rights and obligations, by the court's judgment.

Respectfully submitted,

/s/ H. D. McHenry, /s/ William S. Tarver, P. O.  
Box 2563, Birmingham, Alabama, Attorneys for  
Movant.

January 31, 1957

[fol. 270] Certificate of Service (omitted in printing).

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[fol. 272] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666—January Term, 1957

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent,  
UNITED GAS PIPE LINE COMPANY, Intervenor,  
TEXAS GAS TRANSMISSION CORPORATION, Intervenor.

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Before: Edgerton, Chief Judge, Prettyman and Burger,  
Circuit Judges, in Chambers.

ORDER ALLOWING SOUTHERN NATURAL GAS COMPANY TO  
INTERVENE—February 26, 1957

Upon consideration of the motion of the Southern Natural Gas Company for leave to intervene in the above case, and it appearing that no objections to said motion have been filed, it is

Ordered by the Court that the Southern Natural Gas Company be, and it is hereby, allowed to intervene in the above case.

Per Curiam.

Dated: February 26 1957

[fol. 273] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

MEMPHIS LIGHT, GAS AND WATER DIVISION; CITY OF  
MEMPHIS, TENNESSEE; AND MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent,

UNITED GAS PIPE LINE COMPANY; TEXAS GAS TRANSMISSION  
CORPORATION; AND SOUTHERN NATURAL GAS COMPANY,  
Intervenors.

On Petition for Review of Orders of the  
Federal Power Commission

*Mr. Reuben Goldberg* for all petitioners. *Mr. George E. Morrow*, a member of the bar of the Supreme Court of Tennessee, *pro hac vice*, by special leave of Court, also argued for petitioners Memphis Light, Gas and Water Division and The City of Memphis, Tennessee.

*Mr. Robert M. Weston*, Attorney, Federal Power Commission, with whom *Messrs. Willard W. Gatchell*, General Counsel, Federal Power Commission, and *Howard E.*

*Wahrenbrock*, Solicitor, Federal Power Commission, were on the brief, for respondent.

*Mr. Thomas Fletcher*, with whom *Mr. C. Huffman Lewis* was on the brief for intervenor, United Gas Pipe Line Company.

*Mr. Christopher T. Boland* with whom *Messrs. Richard [fol. 274] J. Connor* and *Thomas F. Brosnan* were on the brief, for intervenor, Texas Gas Transmission Corporation

*Mr. William S. Tarver* for intervenor, Southern Natural Gas Company.

Before BAZELON, WASHINGTON and BASTIAN, Circuit Judges.

OPINION—November 21, 1957

WASHINGTON, *Circuit Judge*: This case concerns the interpretation to be given the Supreme Court's decision in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). The chief question is whether the rule of that case applies where—as here—the controlling supply contracts pledge payment under designated rate schedules “or any effective superseding rate schedules.”

I.

Petitioners seek review of an order of the Federal Power Commission denying their motions to reject new rate schedules filed by the intervenor United Gas Pipe Line Company (United). United sought to increase the prices at which it was obligated by contract to sell gas to the intervenors Texas Gas Transmission Corporation (Texas Gas) and Southern Natural Gas Company (Southern Natural), and also to petitioner Mississippi Valley Gas Company (Mississippi). Also denied by the Commission were petitioners' motions to prohibit the new rates from becoming effective and to require appropriate refunds by United.

Intervenor United is a “natural-gas company” within the meaning of the Natural Gas Act, 52 STAT. 821, 15 U.S.C. § 717a (1952), whose sales are subject to the jurisdiction of the Federal Power Commission. Petitioner Memphis Light, Gas and Water Division is a gas dis-



tribution agency of petitioner City of Memphis, Tennessee. The interests of the City of Memphis and of the Division are identical; hereafter both will be referred to jointly as "Memphis." Memphis obtains all of its gas supply from [fol. 275] intervenor Texas Gas. The latter, a pipeline company, in turn obtains a substantial part of its supply from United. Petitioner Mississippi is a gas distribution system. It obtains some of its supply by purchase directly from United. It also is supplied by Texas Gas and by Southern Natural. Southern Natural, like Texas Gas, obtains a substantial part of its supply from United.

Thus, United has direct seller-buyer relationships with Mississippi, Texas Gas and Southern Natural. United has no such relationship with Memphis, which buys only from Texas Gas. Texas Gas, a customer of United, has seller-buyer relationships with both Memphis and Mississippi. Southern Natural, also a customer of United, has a seller-buyer relationship with Mississippi only. The supply arrangements between the parties are governed by long-term service agreements (contracts).

On September 30, 1955, the Commission accepted United's new schedules for filing under Section 4(d) of the Natural Gas Act, 15 U.S.C. § 717c(d) (1952). The level of these new rates had not been agreed to by United's contract customers. Acting under Section 4(e), the Federal Power Commission suspended the operation of the new schedule for non-industrial sales and ordered a hearing on the lawfulness of the new schedule. These hearings were held, with Memphis as an intervenor therein, but are not involved in the present review.

In February, 1956, while the Section 4(e) hearings were in progress, the Supreme Court announced its decision in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, *supra*, holding that a gas seller could not unilaterally increase its contract rates for gas. Petitioners thereupon filed with the Federal Power Commission motions to prohibit United's new rates from becoming effective on April 1, 1956,<sup>1</sup> to reject those increases, and to order appropriate

<sup>1</sup> April 1, 1956, is five months after November 1, 1955. November 1, 1955, is thirty days after the new schedules were filed. See Natural Gas Act § 4(d), (e), 15 U.S.C. 717c(d), (e) (1952).

[fol. 276] refunds. Their position was that United's filing was a unilateral attempt to increase rates and that the Federal Power Commission had no jurisdiction to process such an application under Section 4(e), as construed in *Mobile*. See also *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The Commission heard argument and on October 2, 1956, denied the motions in an opinion and order. Rehearing was denied on November 23, 1956. Petitioners now seek review of those orders.

## II.

At the outset the Federal Power Commission urges that the orders here under review are interlocutory and not presently subject to our scrutiny. Of the intervenors only United joins in this attack: it urges in addition that petitioners, as strangers to the contracts here involved, are not "aggrieved" under Section 19(b) of the Act, 15 U.S.C. § 717r(b) (1952).

The aggrievement issue is readily answered insofar as petitioner Mississippi is concerned. Mississippi is a party to three of the contracts here involved as a direct customer of United. And United is, in the proceeding here under review, seeking to increase the cost of gas to its direct contract purchaser Mississippi. As to Memphis the situation is somewhat different. Memphis is not a direct customer of United. Rather it purchases from Texas Gas. But the Federal Power Commission has already approved an agreement between Texas Gas and Memphis whereby Texas Gas' customers will reimburse it for any increase in gas cost as a result of the hearings now in progress. Docket No. G-2017, 14 F.P.C. — (1955); see F.P.C. orders at 20 FED. REG. 8088, 8977 (1955). Because of this [fol. 277] F.P.C.-approved agreement, Memphis will feel the immediate impact of any increase awarded. This immediate impact is sufficient to give Memphis standing. See *City of Pittsburgh v. Federal Power Commission*, 99 U.S.App.D.C. 113, 237 F.2d 741 (1956); *National Coal Ass'n v. Federal Power Commission*, 89 U.S.App.D.C. 135, 191 F.2d 462 (1951). No further action of the Commission is necessary to make operative the increased cost to

Memphis. Cf. *California Oregon Power Co. v. Federal Power Commission*, 99 U.S.App.D.C. 263, 239 F.2d 426 (1956); *Cincinnati Gas & Electric Co. v. Federal Power Commission*, — U.S.App.D.C. —, 246 F.2d 688 (1957).

United's and the Commission's contentions that the orders here under review are interlocutory and that therefore we have no jurisdiction are without merit. Suffice it to say that this case is presented to us in substantially the same posture in which the *Mobile* case was presented to the Third Circuit and to the Supreme Court. See *Mobile Gas Service Corp. v. Federal Power Commission*, 215 F.2d 883, 885 (3d Cir. 1954), aff'd sub nom. *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); see also *Tyler Gas Co. v. Federal Power Commission*, — U.S.App.D.C. —, — F.2d — (decided August 1, 1957).

### III.

This case is, in every pertinent aspect save one, a close copy of *Mobile*. That single aspect is the presence in the contracts here involved of the following provision:<sup>2</sup>

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule [here is inserted [fol. 278] the appropriate rate schedule designation], or any effective superseding rate schedules, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof." (Emphasis added.)

In *Mobile*, the Court stated at the outset that—

"The question presented in this case is whether under the Natural Gas Act, 52 Stat. 821, 15 U.S.C. § 717

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<sup>2</sup> There is some dispute among the parties as to whether three of the contracts contain the quoted contract provision. For present purposes we will accept the Commission's representation in its brief that all of the contracts contain the disputed clause or its equivalent.



*et seq.*, a regulated natural gas company furnishing gas to a distributing company under a long-term contract may, without the consent of the distributing company, change the rate specified in the contract simply by filing a new rate schedule with the Federal Power Commission." 350 U.S. at 333-34.

The Supreme Court answered in the negative. In the present case, the question is whether the contract clause quoted above provides the "consent" necessary to give the Federal Power Commission jurisdiction to review under Section 4(e) of the Act United's new schedule filed under Section 4(d).

The Commission found that the phrase "any effective superseding rate schedules" did provide the consent required by *Mobile* and

"that it was the understanding and intent of the contracting parties [as expressed in the above-quoted contract clause] to grant United the power to make changes in rates pursuant to section 4(d) of the Natural Gas Act, without waiver, however, of the right of the purchasers to oppose such changes in proceedings before the Commission for the purpose of testing the reasonableness and justness thereof. . . . United's proposal for increased rates in this proceeding does not constitute a prohibited unilateral change of a contract, for the contract language supplies the purchaser's assent to United's filing of a change in rates."

[fol. 279] In effect, the Commission's position is that the contractual consent to the *act of filing* is sufficient for Section 4(d). Correct though the Commission's statement of the parties' intent may be, it does not answer the question whether the Commission has jurisdiction to accept such a schedule for filing and to proceed under Section 4(e) to review United's filing of a new rate, where the level of the new rate itself has not been previously agreed upon by the parties to the contract. We know as a fact that not only Mississippi but Texas Gas and Southern Natural as well have not consented to the amount of the new rate,

since all three of them are now opposing United's increase before the Commission.

#### IV.

The Supreme Court's opinion, in describing the relation of Sections 4 and 5, stated clearly that Section 4(d) was merely a requirement that the Federal Power Commission and the public be formally notified of any change made in any contract for the sale of gas by a natural gas company. 350 U.S. at 339. The notice contemplated by Section 4(d) is notice of the fact that the contracting parties have reformed their contract: that the seller has offered, and the buyer has agreed to, a particular new price to be effective no less than thirty days after the Commission is notified of the change. 350 U.S. at 339-40. It is only at this point—after the parties have negotiated privately a new price term—that the Commission, under Section 4(d) and (e), in any way becomes involved with the rate changing process. Nothing in Section 4(e) gives the Commission authority to assist the parties in negotiating a new price term.

Under the rule in *Mobile*, for the Commission to review rates under the more expeditious procedure of Section 4(e), the seller must bring to the Commission a negotiated agreement. And that agreement to the new rate must be as specific in its terms as was the previous contractual agreement [fol. 280] to the rate schedule sought to be superseded. See 18 C.F.R. Pt. 154. If such a new rate schedule has been properly agreed upon and is filed pursuant to Section 4(d), the Federal Power Commission may then under Section 4(e) undertake to review the new rate by ordering a hearing on the "lawfulness" of the new rate filing; and the Commission may suspend temporarily the non-industrial part of the new rate. To the extent that the Federal Power Commission is convinced by the filing company that the new rate is neither unjust nor unreasonable, that new rate may be approved, or a lower rate may be approved, or the new rate may be found unlawful in its entirety and, if necessary, appropriate refunds may be ordered.

To quote *Mobile*:

"The relationship of these sections [§§ 4, 5] thus affords no support to petitioners' characterization of §4(d) and (e) as establishing a rate-changing 'procedure'—a 'proceeding' before the Commission 'initiated' by a natural gas company filing a 'proposed' change. Section 4(d) provides not for the filing of 'proposals' but for notice to the Commission of any 'change . . . made by' a natural gas company, and the change is effected, if at all, not by an order of the Commission but solely by virtue of the natural gas company's own action. If the purported change is one the natural gas company has the power to make, the 'change' is completed upon compliance with the notice requirement and the new rate has the same force as any other rate—it can be set aside only upon being found unlawful by the Commission. It is thus no more a 'proposed' rate than any other rate, all of which are equally subject to Commission review. Likewise, no 'proceeding' is 'initiated' by a §4(d) filing. A proceeding to review the new rate may be initiated under §4(e), but, if so, it is initiated by the Commission in the same manner as a proceeding under §5 (a) to review any other rate, that is, upon complaint or its own motion." 350 U.S. at 342.

[fol. 281]

## V.

For these reasons, we hold that since United had not obtained the consent of its contract customers to the rate itself—albeit some of those customers may have consented to the act of filing—the Federal Power Commission had no power to file the new rate schedules under Section 4(d) and therefore could not review the new rate pursuant to Section 4(e). It is not sufficient for a Section 4(d) filing that United's customers have consented to allow United to have the Commission invoke Section 4(e) to review a rate increase during the contract term, where the parties have not agreed to the specific rate. Doubtless the contracting parties could have agreed on a third party to



arbitrate a dispute when the seller sought to raise its price. But the Federal Power Commission has not been given that arbitration function by statute.

Again to quote *Mobile*:

"These sections [§§ 4, 5] are simply parts of a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful. The Act merely defines the review powers of the Commission and imposes such duties on natural gas companies as are necessary to effectuate those powers; it purports neither to grant nor to define the initial rate-setting powers of natural gas companies.

"The powers of the Commission are defined by §§4(e) and 5(a). The basic power of the Commission is that given it by § 5(a) to set aside and modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory, or preferential.' This is neither a 'rate-making' nor a 'rate-changing' procedure. It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them. Section 5(a) would of its own force apply to *all* the rates of a natural gas company, whether long-established or newly [fol. 282] changed, but in the latter case the power is further implemented by § 4 (e). All that § 4 (e) does, however, is to add to this basic power, in the case of a newly changed rate or contract (except 'industrial' rates), the further powers (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective. The scope and purpose of the Commission's review remain the same—to determine whether the rate fixed by the natural gas company is lawful." 350 U.S. at 341.

The contracting parties cannot, of course, vest the Federal Power Commission with power not given to that body by Congress.<sup>3</sup>

[fol. 283] From this discussion it follows that we must reverse and remand this case to the Federal Power Commission for further proceedings not inconsistent with this opinion, and with directions to reject the schedules filed by United and to initiate such proceedings as may be necessary to secure refunds of the incremental amounts paid to United since the time that those schedules were erroneously allowed to become effective.

*So ordered.*

<sup>3</sup> Judge Bazelon and the present writer, speaking only for ourselves, wish to add that in our view acceptance of the position of the Commission and the intervenors in this case would be to give approval to a ready means of debilitating Section 5(a). That section contemplates, *inter alia*, that a natural gas company, claiming that its rates are too low, may seek to have the Federal Power Commission hold a hearing to review its present rates. In that hearing, a record must be made on which the Commission can decide whether the present rates are "unjust, unreasonable, unduly discriminatory, or preferential." And if the rates, after hearing, are found to be too low the Commission may order the rates increased to a lawful level. Respondent and intervenors would have us hold that the natural gas company seeking an increase could avoid that statutory scheme by securing its customer's consent merely to the act of filing, and with such consent be entitled to Commission review under Section 4(e). By using the Section 4(e) procedures the company could get its rates into effect quickly and would avoid both the delay and the more stringent proof requirements of Section 5(a). In the Section 4(e) hearing, according to respondent and intervenors, the filing party would merely be required to show that the new rate—a rate to which, by hypothesis, its customers had *not* consented—is one which is not unlawful, *i.e.*, that it is a rate within a zone of reasonableness, *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951); *Sierra Pacific Power Co. v. Federal Power Commission*, 96 U.S.App.D.C. 140, 142, 223 F.2d 605, 607 (1955), without reference to the lawfulness or adequacy of the old rate. In a Section 5(a) hearing, however, a record would have to be made showing not only that the new rate was lawful, but that the old rate was "unjust, unreasonable, unduly discriminatory, or preferential." And under Section 5(a) if the new, non-consented rate, or any part of it, were approved, it would not become effective until after the hearing was concluded and the increase ordered formally by the Commission. The company awarded the increase would, in addition, have to file under Section 4(d) a new schedule reflecting the rate awarded.

[fol. 284]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

MEMPHIS LIGHT, GAS AND WATER DIVISION; CITY OF  
MEMPHIS, TENNESSEE; and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent,  
UNITED GAS PIPE LINE COMPANY; TEXAS GAS TRANSMISSION  
CORPORATION; and SOUTHERN NATURAL GAS COMPANY,  
Intervenors.

On Petition to Review of Orders of the Federal Power  
Commission.

Before: Bazelon, Washington and Bastian, Circuit Judges.

JUDGMENT—November 21, 1957

This case came on to be heard on the record from the  
Federal Power Commission, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged  
by this Court that the orders of the said Federal Power  
Commission on review herein be, and they are hereby, re-  
versed, and that this case be, and it is hereby, remanded  
to the Federal Power Commission for further proceedings  
not inconsistent with the opinion of this Court, and with  
directions to reject the schedules filed by United Gas Pipe  
Line Company and to initiate such proceedings as may be  
necessary to secure refunds of the incremental amounts  
paid to United Gas Pipe Line Company since the time that  
those Schedules were erroneously allowed to become effec-  
tive.

Dated: Nov 21 1957

Per Circuit Judge Washington.



[fol. 285]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE; and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent.

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PETITION TO REVIEW AND SET ASIDE ORDERS OF THE  
FEDERAL POWER COMMISSION—Filed January 11, 1957

To the Honorable, the Judges of the United States Court  
of Appeals for the District of Columbia Circuit:

Come now the Petitioners, Memphis Light, Gas and Water Division, an agency of the City of Memphis, Tennessee, created and existing by virtue of Chapter 381 of the Private Acts of the General Assembly of Tennessee for 1939, the City of Memphis, Tennessee and Mississippi Valley Gas Company, a corporation organized and existing under the laws of the State of Mississippi, and, being aggrieved by Opinion No. 295 and accompanying order of the Federal Power Commission (Commission) issued October 2, 1956, and the order issued November 23, 1956, denying rehearing, in the Commission proceedings styled "*In the Matter of United Gas Pipe Line Company*", Docket No. G-9547, respectfully petition this Honorable Court to review and set aside said orders.

## [fol. 286] Jurisdiction and Venue

This petition for review is filed under and pursuant to the provisions of Section 19(b) of the Natural Gas Act (Act June 21, 1938, C. 556, 52 Stat 831; 15 USC 717r(b)) which provides in pertinent part as follows:

"(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission under the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part."

## Statement of the Proceedings

On October 1, 1955, United Gas Pipe Line Company (United), purporting to act under Section 4(d) of the Natural Gas Act (15 USC Section 717c), filed with the Federal Power Commission certain new schedules of rates and charges whereby United proposed to increase by \$10,000,000 annually, its rates and charges for sales of natural gas for resale in interstate commerce. The Commission on October 26, 1955, entered an order suspending the proposed rates, except those applying to sales for resale for industrial use only, until April 1, 1956, and providing for a hearing upon the reasonableness of the new rates. The proposed increased rates for sales for resale for industrial use only became effective on November 1, 1955, without suspension because Section 4(e) of the Natural Gas Act prohibits the suspension of such rates.

[fol. 287] The Memphis Light, Gas and Water Division filed a petition to intervene in the proceedings alleging that it was the sole distributor of natural gas for the City of Memphis and its environs; and that it purchased its entire requirements of natural gas from Texas Gas Transmission Corporation (Texas Gas) which, in turn, purchased large

quantities of gas from United for resale to Memphis Division and its other customers. As a consequence of this, Memphis Division's cost of gas purchased from Texas Gas would be increased in the event of an increase in United's rates to Texas Gas. The City of Memphis filed a notice of intervention alleging that it was a municipality with power to regulate the rates of the Memphis Division.

Mississippi Valley filed a petition to intervene on the grounds that it purchased natural gas directly from United for distribution in Jackson, Mississippi, and also purchased natural gas from Texas Gas and Southern Natural Gas Company (Southern Natural) which, in turn, each purchased large quantities from United for resale to Mississippi Valley and their other customers.

On January 31, 1956, the Commission issued an order granting intervention to each of the Petitioners.

Hearings began on January 6, 1956, and United completed presentation of its direct case on February 7, 1956. During the course of the hearings, the United States Supreme Court decided *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U. S. 332 and *Pacific Gas and Electric Company v. Sierra Pacific Power Co.*, 350 U. S. 348. In these cases, the Supreme Court held that contract rates are not subject to change under the provisions of Section 4 of the Natural Gas Act and Section 205 of the Federal Power Act, by the unilateral filing of a new schedule of rates proposing a new level of rates. Such rates, the Supreme Court held, in the absence of agreement between purchasers and seller on a specific new rate, could be changed only by initiation of a rate investigation by the [fol. 288] Commission under Sections 5 and 206 of the Natural Gas and Federal Power Acts, respectively, and after hearing.

Thereafter, Mississippi Valley filed a motion (1) to prohibit United's increased rates from going into effect as to Mississippi Valley and its suppliers, Texas Gas and Southern Natural, at the end of the suspension period on April 1, 1956; (2) to reject and dismiss United's rate filing so far as it affected said companies; and (3) for refund of the increased industrial rates which Mississippi Valley had been forced to pay since November 1, 1955.



Memphis Division and the City of Memphis also filed a joint motion to reject and dismiss United's rate filing insofar as it purported to increase rates to Memphis' supplier, Texas Gas.

Each of these motions was made upon the ground that United's rate filing constituted an attempt unilaterally to increase contract rates to customers who had not consented to the payment of the new rates; and that under the rule announced by the United States Supreme Court in the *Mobile* and *Sierra Pacific cases, supra*, United had no power to charge increased rates to its contract customers without their agreement to pay same, and the Commission had no jurisdiction and authority to grant United's proposal under Section 4 of the Natural Gas Act for a unilateral rate increase to contract customers.

Oral argument on the motions was heard by the Commission on May 25, 1956, and on October 2, 1956, the Commission issued its Opinion No. 295 and accompanying order denying said motions.

A joint application for rehearing, which is made a part hereof as though fully set forth herein, was timely filed by Petitioners herein, and was denied by Commission order of November 23, 1956.

[fol. 289]      Points Upon Which Petitioners  
Intend to Rely

### *Preliminary Statement*

Each of the contracts herein involved contained a provision that the gas purchased thereunder should be paid for under a specified existing rate schedule, "or any effective superseding rate schedules on file with the Federal Power Commission". The quoted language, in the Commission's view, requires an opposite result here from that reached in the *Mobile* and *Sierra Pacific cases, supra*, which reversed similar Commission rulings. The Commission's opinion reads into the quoted phrase express consent by all customers authorizing United to file with the Commission any rate increase it pleased at any time and as often as it pleased. The opinion concedes, however, that United's rate increase filing was not a change by mutual agreement,

but purely a unilateral "proposal for increased rates" which rates not only lacked agreement and consent of the customers, but were subject to opposition by them in the Commission proceeding. Indeed, several customers of United have actively participated in the proceedings in opposition to the proposed increase..

### *Errors Assigned*

1. The Commission erred in holding that United's rate filing in this proceeding "is one which United has the right and power to make pursuant to the provisions of Section 4(d) of the Natural Gas Act". (Opinion No. 295, mimeo. ed., p. 4) This was erroneous for the reason that the increased rates sought by United constitute unilateral changes in United's rate contracts with its customers, which changes United has no right or power to make under Section 4(d) because none of United's customers have agreed to pay such increased rates.

[fol. 290] 2. The Commission erred in holding that the instant proceeding was properly instituted pursuant to Section 4(e) of the Natural Gas Act. This was error for the reason that the Commission is empowered under Section 4(e) to institute proceedings to investigate the lawfulness only of *changes* in rate schedules, and has no jurisdiction or authority to investigate *proposals* for changes in rates or to issue orders granting such proposals. The Commission expressly recognizes that United's filing herein is nothing more than a "proposal for increased rates" (Opinion No. 295, mimeo. ed., p. 9).

3. The Commission erred in holding that the agreement by United's customers to pay for natural gas in accordance with specified existing schedules or any "effective superseding rate schedule" of United should be construed as conferring upon United the right to use the procedures provided by Section 4(d) of the Natural Gas Act to propose rate increases to the Commission. This was error for the reason that the language of the contract does not permit such construction, and substantial evidence does not support that construction, and for the further reason that even if the contracts were susceptible of that con-

struction, the contract could not confer a right to an administrative procedure not provided for in the governing statute. The Natural Gas Act does not provide for proceedings upon proposals concerning rate increases.

4. The Commission erred in holding that the effect of the agreements contained in United's contracts with Mississippi Valley, Texas Gas, and Southern Natural was to grant United the power to make changes in rates under the procedures established in Section 4 of the Natural Gas Act. This was error for the reason that the language of the contracts does not permit such construction, and it is not supported by substantial evidence, and for the further reason that Section 4 of the Act does not provide procedures for making rate changes by natural gas companies.

[fol. 291] 5. The Commission erred in holding that, under the Natural Gas Act, an agreement between the parties to a natural gas rate contract can confer upon the seller the right to file with the Commission a proposal for a unilateral change in rates, because the Natural Gas Act makes no provision for the filing of proposals or for action by the Commission upon proposals.

6. The Commission erred in finding that the service agreements between United and its customers provide that any rates which United may file with the Commission shall be the effective rates for sales to such customers. There is no evidence in the record to support such finding.

7. The Commission's findings and conclusions of Opinion No. 295 and accompanying order are not supported by substantial evidence and are contrary to law.

8. For all the reasons above set forth, the Commission erred in finding that no good cause exists for it to grant the motions filed by Petitioners herein, and in denying the motions of Petitioners hereinabove set forth, and in denying Petitioners' joint application for rehearing of the Commission's opinion and order denying said motions.

Wherefore, Petitioners respectfully pray:

1. That a copy of this Petition be forthwith served upon a member of Respondent, the Federal Power Commission, in accordance with Section 19(b) of the Natural Gas Act;



2. That Respondent, in conformity with Section 19(b) of the Natural Gas Act, be required to certify and file with this Court a transcript of the record upon which the opinion and orders here sought to be reviewed were entered.

3. That the Commission's Opinion No. 295 and accompanying order of October 2, 1956, be reviewed and set aside and that an order enter remanding the proceedings to the [fol. 292] Federal Power Commission with directions (a) to reject, cancel and dismiss the filing made by United Gas Pipe Line Company for increased rates, so far as such increases apply to Mississippi Valley Gas Company, Texas Gas Transmission Corporation, and Southern Natural Gas Company; (b) to order refund of increases in rates paid by Mississippi Valley under its industrial use rate schedules since November 1, 1955, together with interest at 6% per annum and (c) to order refunds to Mississippi Valley, Texas Gas, and Southern Natural of all increases in rates paid by said companies to United since April 1, 1956, together with interest upon all such refunds at 6% per annum.

4. That Petitioners have such other and further relief as they may be entitled to in the premises.

Respectfully submitted,

Memphis Light, Gas and Water Division, By Thos.  
H. Allen, President.

City of Memphis, Tennessee, By Edmund Orgill,  
Mayor.

Mississippi Valley Gas Company, By Minor C. Sum-  
ners, President.

Reuben Goldberg, 439 Wyatt Building, Washington 5,  
D. C., Attorney for Mississippi Valley Gas Company,  
Memphis Light, Gas and Water Division and City of Mem-  
phis, Tennessee.

George E. Morrow, Union Planters National Bank Build-  
ing, Memphis, Tennessee, Attorney for Memphis Light,  
Gas and Water Division and City of Memphis, Tennessee.

[fol. 293] *Duly sworn to by Thos. H. Allen, jurat omitted  
in printing.*

[fol. 294] *Duly sworn to by Edmund Orgill. jurat omitted in printing.*

[fol. 295] *Duly sworn to by Minor C. Sumners, jurat omitted in printing.*

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[fol. 296] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,666

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MEMPHIS LIGHT, GAS AND WATER DIVISION, THE CITY OF  
MEMPHIS, TENNESSEE, and MISSISSIPPI VALLEY GAS COM-  
PANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent,  
UNITED GAS PIPE LINE COMPANY, TEXAS GAS TRANSMISSION  
CORPORATION, and SOUTHERN NATURAL GAS COMPANY,  
Intervenors.

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DESIGNATION OF RECORD—Filed December 19, 1957

United Gas Pipe Line Company, Intervenor in this Court, intends to file with the Supreme Court of the United States a Petition for Certiorari from the decision of this Court and its opinion and judgment handed down on November 21, 1957. Intervenors Texas Gas Transmission Corporation and Southern Natural Gas Company intend to apply to the Supreme Court of the United States for a Writ of Certiorari from the opinion and decision of this Court in the above case handed down on November 21, 1957. In this situation such parties have stipulated for Joint Designation of Record on Appeal with the intent that the one record shall be available to them as Petitioners in the Supreme Court of the United States upon their [fol. 297] respective Petitions for of (sic) Certiorari to be filed. In accordance with such stipulation the parties have

hereto jointly prepared and executed this Designation of Record.

The Clerk is requested to prepare a certified transcript of record for use on Petitions to the Supreme Court of the United States for Writs of Certiorari in the above entitled and numbered cause, and include therein the following:

1. Joint Appendix.
2. Motion of United Gas Pipe Line Company to Intervene.
3. Order permitting United Gas Pipe Line Company to Intervene.
4. Motion of Texas Gas Transmission Corporation to Intervene.
5. Order permitting Texas Gas Transmission Corporation to Intervene.
6. Motion of Southern Natural Gas Company to Intervene.
7. Order permitting Southern Natural Gas Company to Intervene.
8. Opinion of the Court.
9. Judgment of the Court.
10. Joint Petition for Review of Petitioners Memphis Light, Gas and Water Division, The City of Memphis, Tennessee, and Valley Gas Company.
11. This Designation.
12. The Clerk's Certificate.

/s/ Thomas Fletcher, Attorney for United Gas Pipe Line Company, Intervenor.

/s/ Christopher T. Boland, Attorney for Texas Gas Transmission Company, Intervenor.

/s/ W. S. Tarver, Attorney for Southern Natural Gas Company, Intervenor.

[fol. 298] Certificate of Service (omitted in printing).



[fol. 300] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 301]

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

SECRETARY'S CERTIFICATE

I, Joseph H. Gutride, Secretary of the Federal Power Commission, hereby certify that the attached twenty three pages 19, 282-287, 289-296, 428-429, 348-350, 448-450, constitute a true copy of portions of the record of the Federal Power Commission in the case in the United States Court of Appeals for the District of Columbia Circuit, entitled No. 13,666—*Memphis Light, Gas & Water Division, et al. v. F.P.C.*, as the same remain upon the files and records of the Federal Power Commission. In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 13th day of February A.D., 1958, at Washington, D. C.

s/ Joseph H. Gutride,  
Secretary.

[fol. 302]

BEFORE THE FEDERAL POWER COMMISSION

Commissioner Digby: What is your position as to the intention of Mississippi Valley and United, their interpretation of the obligations assumed by this service agreement? In other words, did they contemplate in entering into that agreement that it would be subject to what traditionally the Commission had considered its authority under section 4, or did it have in mind the law as declared by the Mobile decision?

Mr. Goldberg: Mississippi Valley contends that it agreed only that the rates could be changed in the lawful manner prescribed by the Natural Gas Act, in whatever was the lawful manner. That they did not agree—

[fol. 303]

## BEFORE THE FEDERAL POWER COMMISSION

Jun 27 1952

United Gas Pipe Line Company  
Shreveport 92, Louisiana

Attention: Mr. Winston W. Brown; Assistant Secretary

Gentlemen:

This is with reference to your letter of May 29, 1952, and the tender therewith of the material listed in your letter, including United Gas Pipe Line Company proposed FPC Gas Tariff, Original Volumes Nos. 1 and 2.

The material submitted for filing does not meet the requirements of the Commission's General Rules and Regulations under the Natural Gas Act. The deficiencies in the submittal were discussed by the staff on June 11 and 12, 1952, with Mr. C. Huffman Lewis and Mr. H. Zinder, on behalf of the company. The principal items of non-compliance are as follows:

1. Section 13.1 of the proposed Tariff, General Terms and Conditions, contains a rate escalator provision. The inclusion of this escalator clause in the General Terms and Conditions is in contravention of Section 154.38(3) of the Commission's rules which prohibits such provision in the "rate schedule or any other part of the tariff," but permits the inclusion "in the service agreement \* \* \* that it is or will be" a natural-gas company's "privilege, under certain specified conditions, to propose to the Commission a modification, change or substitution of the then effective rate or charge."

The Commission has not accepted for filing any rate schedules or tariffs filed pursuant to Part 154 of its present rules which contain proposals for the adjustment of rates by reason of escalator provisions where such proposals, contrary to the prohibitions contained in the rules, have been included in the rate schedule or general terms and conditions. The Commission has accepted for filing tariffs where proposals respecting adjustment of rates by reason of rate escalator provisions are reflected in the form of service agreements only as permitted by the Commission's

rules. In this connection it is noted that drafts of your FPC Gas Tariff proposals dated November 28, 1951 and December 28, 1951, which were informally submitted to the staff of the Commission by your representatives for comment proposed the inclusion of an escalator provision in the form of service agreement but not in the general terms and conditions.

[fol. 304] 2. The proposed tariff conversion seeks to effect changes in the effective filed rate schedules, other than the rate increases to the five pipe line companies, without compliance with Section 154.63(b)(1) of the Commission's rules which requires "A statement of the nature, the reason and the basis of the proposed change." Among the more important changes in certain of the Town Border rate schedules, for which the requisite information has not been submitted, are those including the change-over from all requirements service to specific volumetric ceilings, introduction of minimum bills for the sales of gas for general purposes and for resale to specified industrial customers, and reduction in minimum heat content guarantee from 900 to 850 Btu.

As you are no doubt aware, these requirements of the Commission's rules are necessary to the Commission's administration of the provisions of Section 4(d) of the Natural Gas Act whereby the Commission must evaluate the proposed changes in tariffs, rate schedules and contracts in a limited period of 30 days. Compliance with the requirement of Section 154.63(b)(1) is particularly important in the case of your company since there are on file with the Commission as rate schedules of your company a total of about 80 individual basic contracts, not counting the numerous supplements to such contracts. Additionally, the data called for by these requirements of the Commission's rules are necessary to enable customers of your company and other interested parties to submit their comments on your proposals within 15 days after the date of filing as required by Section 154.27 of the Commission's rules.

3. The tendered conversion tariff is incomplete by failure to account for some 30 effective rate schedules on file with the Commission and by failure to provide tariff rates



for the gas sold for resale in certain specified communities under certain other effective rate schedules on file with the Commission. In the absence of the filing of appropriate Notices of Cancellation with respect thereto, these omissions constitute non-compliance with Section 154.82 of the Commission's rules which requires the conversion of "All effective schedules of rates, charges, classifications, practices, regulations and contracts. . . ."

The rate schedules for which no counterparts are included in the proposed tariff have not been canceled in accordance with, and as required by, the Commission's rules.

In this connection your attention is directed to the fact that the proposed tariff departs in many respects from the position taken by your company previously, particularly in your company's letter of July 19, 1948, as to what sales are considered by your company as not subject to Commission's jurisdiction.

[fol. 305] 4. Volume No. 2 of the proposed tariff contains supplements for proposed Rate Schedule X-2. Section 154.52 of the Commission's rules provides "Such rate schedules shall not contain any supplements."

The matter of supplements to rate schedules which your company proposed to submit pursuant to Section 154.52 of the Commission's rules was the subject of discussion between a representative of your company and the Commission's staff on January 4, 1952. Your representative was then advised that the Commission's rules did not permit the filing of any supplements with special rate schedules. He was further advised, however, that the Commission had accepted, as in substantial compliance with the rules, conversions of contracts containing supplements into tariff form where the specific change made by a supplement was stated in a footnote to the basic contract and the supplement itself was attached as an exhibit to such special rate schedule. He was shown several examples of such conversions.

5. The cost data submitted in support of the proposed increases in rates to the five pipe line companies do not contain an adequate "explanation of method of allocation" as is required by Section 154.63(b)(3) of the Commission's

rules. The cost data initially submitted in support of the increased rates contained the statement that "A substantial part of all the plant investment and costs related thereto, for this [Northern] area are directly available from the Company records." In addition, it was stated that costs were assigned in accordance with the demand-and-commodity method; but the data did not show the derivation of the claimed cost for the area from total system cost. Subsequent to the formal submission of the proposed tariff, additional data were submitted informally by the company to the Commission's staff, which data, if they had been included in the initial filing, would have satisfactorily met the requirements of Section 154.63(b)(3). Therefore, in any resubmittal, these data should be included in support of the rate increase.

The Commission is not unmindful of the fact that some parts of your company's proposals are not directly affected by the deficiencies of your submittals referred to above. However, the proposed FPC Gas Tariff, Original Volumes Nos. 1 and 2, are not designed to enable the Commission to deal with its components separately. In the circumstances, and for the reasons stated above, the Commission has no alternative but to reject in its entirety the tender for filing of United Gas Pipe Line Company's proposed FPC Gas Tariff, Original Volumes Nos. 1 and 2, and such tariff is hereby rejected.

[fol. 306] This action is without prejudice to the resubmittal by United Gas Pipe Line Company of its proposed FPC Gas Tariff and rate increase application when submitted in accordance with the requirements of the Commission's rules. The staff of the Commission will be available to give assistance and to clarify the Commission's position in these matters in enabling you to work out a satisfactory submittal of an FPC Gas Tariff as provided by Sections 154.25 and 154.86 of the Commission's rules.

There is returned herewith United Gas Pipe Line Company proposed FPC Gas Tariff, Original Volumes Nos. 1 and 2, tendered for filing on May 29, 1952. One copy of the aforementioned tender is being retained in the Commission's files for its information.

By direction of the Commission. Commissioner Draper dissenting.

J. H. Gutride  
Acting Secretary

Enclosure No. 90234

cc: EBASCO Services Incorporated  
1625 Eye Street, N. W.  
Washington, D. C.

(Handwritten)  
Approved at  
3332nd meeting  
June 27, 1952

H. A.

RATES

LZ-RG:prm  
6/27/52

[fol. 307]

BEFORE THE FEDERAL POWER COMMISSION

UNITED GAS PIPE LINE COMPANY  
Shreveport, Louisiana

July 3, 1952

Federal Power Commission  
Washington 25, D.C.

Attention: Mr. Leon M. Fuquay, Secretary

Gentlemen:

On May 29, 1952, United Gas Pipe Line Company (United) filed with the Commission its FPC Gas Tariff and supporting data to comply with the requirements of Part 154 of the Commission's Rules as prescribed by Order No. 144 and to propose a rate increase to certain classes of customers. United Gas Pipe Line Company in filing the tariff, believed that it had complied with every applicable requirement of Part 154 of the Commission's regulations.

The Commission, by letter of June 27, 1952, rejected the filing of the Tariff for failure to meet certain requirements of the Rules. The Commission's letter stated that the Staff



of the Commission would be available to clarify the Commission's position in these matters in order that United may be able to work out a satisfactory submittal of a tariff. United has had several conferences with members of the Commission Staff. They have explained their interpretation of the Commission's rules and made suggestions as to how United might best meet these regulations. In this filing, United has sought to follow every indicated requirement and suggestion.

United Gas Pipe Line Company herewith refiles the original Tariff and Rate Increase Application submitted on May 29, 1952, with the additions and deletions in accordance with the letter of the Commission and the request of the Staff. There is attached to this letter a statement discussing the respects in which the filing of May 29, 1952, is amended to meet each one of the points stated in the Commission's letter, and in which United has met the requests of the Staff made on June 11 and 12 and on June 30, July 1 and July 2, 1952, in clarification of the Commission's position.

Subsequent to the tariff filing of May 29, 1952, the Commission on June 3, 1952, issued its order in Docket Nos. [fol. 308] G-1750, G-1860 and G-1873 involving deliveries to Southern Natural Gas Company. This order dismissed FPC Rate Schedules Nos. 112-A and 112-B, previously filed by United, thereby reinstating FPC Rate Schedule No. 87. As a condition in the order granting certain certificates the Commission required United to file revised contracts (Rate Schedules) in lieu of FPC Rate Schedules Nos. 112-A and 112-B. United filed such contracts on July 2, 1952, following conferences with the Staff. Accordingly, each of the volumes comprising this filing, the tariff, revenue comparison, cost of service data and response to Section 154.85 of the Commission's Rules, contains alternatives to make each document complete when the filing made on July 2, mentioned above, is accepted by the Commission. Under the circumstances, namely, that as of this date of refileing, the contracts filed on July 2, 1952, are not yet effective, the basic filing, of necessity, is prepared with deliveries, revenues and costs for Southern Natural Gas Company relating to the presently effective FPC Rate Schedule No. 87.

It is respectfully requested that the Commission make the tariff effective as of August 3, 1952.

There is being sent to each customer and State Commission to whom the original filing was sent, copies of the revised tariff sheets described in Section 6 of the attached statement.

Very truly yours,

UNITED GAS PIPE LINE COMPANY

By /s/ H. O. CRAIN  
General Counsel

[fol. 309]

BEFORE THE FEDERAL POWER COMMISSION

UNITED GAS PIPE LINE COMPANY

STATEMENT OF CHANGES MADE IN FILING OF MAY 29, 1952  
AND SUPPLEMENTAL DATA

- (1) Point 1 of the Commission's letter of June 27, 1952, states that Section 13.1 of the Tariff contains an "escalator" provision in contravention of Section 154.38 (3) of the Commission's Rules.

The cited Tariff provisions states:

"The rates established by Seller are designed to reflect Seller's cost of rendering service and to provide a fair rate of return to Seller. In the event an increase in Seller's cost, or of any change which would result in the rate of the Seller providing less than a fair rate of return, Seller shall have the right to revise its rate to reflect such change. Such revised rates shall be charged only after they have been filed with the Federal Power Commission and become effective in accordance with its Rules and Regulations."

The rule cited by the Commission as the authority for rejection (Section 154.38(3)) prohibits any provision which . . .

"in any way purports to effect the modification or change of any rate or charge specified in the

rate schedule,, or the substitution therefor of any other rate or charge."

United, in placing the foregoing provision in its Tariff was under the impression that it was merely placing its customers on notice of its right and obligation to file reasonable rates, as provided by the Natural Gas Act. United was at that time, under the impression that the provision did not "purport to effect the modification or change", or "purport to effect the substitution" of any other rate or charge.

However, the provision is being stricken from Sheet 92 of the Tariff.

The Commission's letter appears to indicate that the provision, which also is contained in the forms of service agreement on Sheets 98, 106, 111 and 112, and 116, may be satisfactory in such position in the Tariff, but it is not clear whether the Commission requires a rewording of the provision as submitted to be proper. Accordingly, to resolve any question, United has stricken the provision from the forms of service agreement.

- (2) Point 2 of the Commission's letter of June 27, 1952, states that the proposed Tariff conversion seeks to effect changes in the effective filed rate schedules covering service to distributing companies without [fol. 310] having submitted a statement of the nature, the reason and the basis of the contemplated changes. The letter points to the change-over from entire-requirement to specific volumetric ceilings, to introduction of minimum bills for the sale of gas for general purposes and for resale to specified industrial customers, and reduction in minimum heat content guaranteed from 900 to 850 B.t.u. per cubic foot as being among the more important changes in certain of the Town Border rate schedules.

Certain general statements regarding the nature, reasons and basis of proposed changes were made in United's letter of May 29, 1952. The city-gate rate changes result from the Commission requirement that United Gas Pipe Line Company comply with the re-



quirements of the Commission's Rules relating to the filing of a Tariff in lieu of existing individual contracts. The individual city-gate rates have been designed and are proposed as a result of this requirement, in order to eliminate percentage arrangements to conform to the expressed preference of the Commission's Rules that rates be stated in specific cents or dollars and cents per unit (Sec. 164.38(d)); and in order to avoid changes in over-all rate level to any distributor or community. Generally, special large volume industrial use rates have been established for individual customers using more than 200,000 Mcf a year with the level substantially the same as in the past, in order to maintain a competitive position. Other city-gate rates, for general service, have been established on the basis of no change in total charges for the community. A demand component is proposed in the rates where individual city-gates involve requirements of more than approximately 3,000 Mcf a day.

With respect to the several specific points set forth by the Commission, a change over from entire-requirement obligations to specific volumetric ceilings is not effected at the present time. The entire requirement obligations under existing rate schedules are being retained without change as set forth in the contract statements filed pursuant to Section 154.85 of the Commission's Rules. At such time in the future as the customers elect to execute service agreements in the form contained in the Tariff, specific volumetric ceilings will be established. Such volumetric ceilings will permit United to know the specific volumetric obligations it may be called upon to meet and permits an accurate scheduling of system capacity expansion. Such volumetric ceilings also provide a more definite indication to the individual customer, of the specific amount of gas such customer can expect to receive at all times.

[fol. 311] With respect to the introduction of minimum bills, attention is respectfully invited to the fact that service to a distributor customer, and particularly the larger distributor customers, involve substantial

investments with the concurrent incidence of large fixed and minimum costs upon United. These factors result in United's decision to institute a demand component in the larger city-gate rates (designated as the DG series). Since the demand factor is not expressed as a demand charge, but rather is expressed as a Wright type of demand rate, a minimum bill is instituted to make the characteristic of the rate more nearly parallel that of the customary demand-commodity form of rate, as well as to reflect to some extent the existence of the minimum costs upon United of being prepared to serve the distributors. Insofar as the special industrial rate schedules are concerned, attention is invited to the fact that the minimum bill is based upon the ratio of average month to highest month during the calendar year, and is, therefore, in the nature of a minimum load factor requirement. The rates for gas sold for resale for such special industrial purposes are very low, and the loads are generally of a high load factor. The minimum bill is instituted to assure that the load factor of such loads will not fall too low. Generally, the specific minimum bill selected for the individual rate schedule has been based upon experience during 1951, and has been set at a low enough amount so that no customer maintaining its load at the 1951 level will have to pay under the minimum bill provisions.

With respect to these instances in which heat content provisions are changed from 900 to 850 B.t.u., attention is directed to the invitation expressed in Section 154.84 of the Commission's Rules, that differences in phraseology should be reconciled whenever possible, and to the general intent of the rules that there by standardization. United, in attempting to satisfy this requirement as far as possible, has instituted a single system-wide minimum heat content for all city-gate sales. In selecting the specific value of 850 B.t.u., United selected the one which was by far, the most prevalent in its city-gate contracts on file with the Federal Power Commission. There is no intent to change operations so as to reduce the actual

heat content of the gas delivered to any individual customer.

This effort to meet the general intent of standardization has resulted in other changes of a relatively minor nature. The assumed atmospheric pressure has been changed to a uniform 14.7 pounds per square inch for [fol. 312] the same reason of standardization; the other measurement and measuring equipment provisions have similarly been standardized as far as city-gate customers are concerned. Similarly, other General Terms and Conditions represent standardization made to meet the intent of the Commission's Tariff Rules, and make changes of a minor nature in the corresponding contract provision of individual customers.

The Federal Power Commission Staff, in clarifying the Commission's position in this matter, has requested a contract-by-contract statement of such changes. There is attached a 56-page report prepared in response to the Staff's request.

- (3) Point 3 of the Commission's letter states that the tendered conversion Tariff is incomplete by failure to account for some thirty (30) effective rate schedules on file with the Commission and by failure to provide tariff rates for the gas sold for resale in certain specified communities under certain other effective rate schedules on file with the Commission. The letter points out that in the absence of the filing of appropriate notices of cancellation with respect thereto, these omissions constitute non-compliance with Section 154.82 of the Commission's Rules which requires the conversion of "all effective schedules of rates, charges, classifications, practices, regulations and contracts . . ."

Attention is respectfully invited to the fact that Part 154, at its very beginning (Section 154.1) is specific that the entire part relates only to Rate Schedules subject to the jurisdiction of the Commission. In making the filing, United specifically pointed out in its letter of May 29, 1952, that the matter of jurisdiction was carefully studied, and that the tendered tariff includes rates for all sales subject to the jurisdiction of the Commission. Accordingly, United was under



the impression that it met fully the requirements of the above cited rule Section 154.82.

In order that this question be resolved, United encloses herewith three letters, each containing cancellations, in whole or in part, for contracts filed previously with the Federal Power Commission which for one reason or another, as indicated by such letters have not been included in the Tariff. Our understanding is that this does not require any change in the Tariff. Pursuant to the request of the staff, such letters include data showing volumes of gas delivered and and revenues by months for each community involved by such cancellations. There is also attached, pursuant to staff request, a statement with respect to the rate schedules covered by the cancellations, describing the circumstances under which these rate schedules are not subject to the jurisdiction of the Commission.

[fol. 313] (4) Point 4 of the Commission's letter relates to the existence of three supplements to our Exchange Agreement with Texas Eastern Transmission Corporation, designated as Rate Schedule X-2 in our Tariff Volume No. 2. The Commission letter points out that Section 154.52 of the Commission's Rules states that such special rate schedules shall not contain supplements, but indicates that the rate schedule may be acceptable if the supplements be designated as Exhibits and if the changes effected by such supplements to the basic contract be stated in footnotes contained in the basic contract.

This has been done by the following revised sheets to Volume No. 2:

Sheet 10  
 Sheet 12  
 Sheet 15  
 Sheet 17  
 Sheet 19  
 Sheet 21

(5) The fifth point mentioned by the Commission's letter is that the explanation given in the cost data of the

method of allocation, and of other matters was not sufficiently adequate to meet the requirement of the rule (Section 154.63(b)(3)). The letter further points out that certain additional data were informally given by United to the Staff, and that if such data were included in the formal submission, the requirement of the rule would be satisfactorily met.

The Rules did not indicate to United the amount of detail to be given with the cost data for a rate increase filing, and United was under the impression that its filing did comply with the requirements of the Rules, especially since United immediately made working papers available to the Staff.

The data handed informally to the Staff have been incorporated as an additional section in the Application for Rate Increase.

In addition, the staff requested United at a meeting held on July 1, 1952 to recompute the cost study making an adjustment to reflect what the situation during 1951 would have been, if United had placed in effect during 1951, its new sales agreement and transportation agreement with Southern Natural Gas Company as authorized by the Commission's order of May 27, 1952 in Dockets Nos. G-1750, G-1860 and G-1873. This has been done, and is included in the additional section in the Application for Rate Increase.

[fol. 314] (6) In the conferences which the Staff held on June 11 and 12, 1952, with representatives of United, the Staff indicated many specific changes it thought should be made in the Tariff. The Commission's letter states that the deficiencies in the submittal were discussed by the Staff. Since the letter does not make clear which of the Staff's recommended changes are necessary to correct deficiencies, United has attempted to make all the changes suggested by the Staff at the conferences, as described below; with two minor exceptions as described in (m) and (n) below:

(a) Sheets 4, 6, 8, 10 and 12. The minimum bill provision as submitted stated (the specific price varies as between sheets):

"The total bill to Buyer for any billing month for service in each Billing Area Unit under this Rate Schedule shall be not less than 75¢ per Mcf of the Billing Demand in effect for the billing month."

This has been changed by substituting the word "minimum" for "total" on the first line, and by striking the words "not less than" on the second line.

(b) Sheet 14. The Applicability Clause has been changed to eliminate the phrase "except such natural gas as is purchased for resale for Large Volume Industrial Use Only under 'IND' Rate Schedules available to Buyer under this tariff."

(c) Sheets 31, 33, 35, 37, 39, 41, 43, 45, 47, and 49. These industrial rate schedules, generally name the special industrial consumers in both the availability and the applicability clauses. Pursuant to Staff comment, the consumers are now named only in the availability clause.

(d) Sheet 56. Pursuant to Staff comment, a Section 9 has been added, and the subsequent sections renumbered. Section 9 constitutes a Determination of Delivery section representing the complement to Section 9 of Rate Schedule PL-3.

(e) Sheet 58. The provision entitled "Quantities" provided as follows: "The quantities of gas which Seller is obligated to sell and deliver and Buyer is obligated to purchase and receive shall be the quantities as specified in the Service Agreement. Nothing in this Rate Schedule shall relieve either Buyer or Seller of any such volumetric obligations."

Pursuant to Staff comment, the last sentence has been stricken.

[fol. 315] (f) Sheet 62. The provision entitled "Temporary Excess Deliveries" was as follows:

"Upon request from Buyer, Seller may, at its option, and with approval in writing given to Buyer, from time to time, transport, on a temporary basis, gas in



excess of the quantities provided in Subsection 6.1 above."

Pursuant to Staff comment, the phrase: "and with approval in writing given to Buyer" has been stricken.

(g) Sheet 63. The Staff pointed out that the heading "Quantity of Gas" was a typographical error, and should read "*Quality*" instead of "Quantity".

This change has been made.

(h) Sheet 92. This has been changed as described under Point (1) of this statement.

(i) Sheet 94. The section of this sheet provided as follows:

"The Rate Schedules in the Tariff are available only in connection with those sales of natural gas for resale in interstate commerce which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, as amended, and are not available in connection with any other sales."

Pursuant to Staff comment, the word "those" and the words "which are" have been stricken.

(j) Sheets 98, 106, 111, 112, and 116. These sheets have been changed as described under Point 1 of this statement. In addition, the word "Schedules" in the phrase: "All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedules. ...." has been changed to the singular pursuant to Staff comment.

(k) Original Sheet No. 109. The parenthetical statement in the title read as follows:

"(Applicable to Service to Pipe Line Companies)".

Pursuant to Staff comment, the phrase "to Pipe Line Companies" has been revised to "under 'PL' rate schedules."

(l) Volume 2, Sheets 10, 12, 15, 17, 19, and 21. These sheets have been changed as described under Point (4) of this statement.

[fol. 316] (m) The Staff commented that there was an inconsistency between Exhibit A of Form A of the Service Agreement and Article III of the Service Agreement. Generally, Article III is to specify the maximum daily delivery obligation under the service agreement, whereas Exhibit A is to specify the Maximum Daily Delivery Obligation at individual delivery points. This arrangement is to meet an operating problem. Where more than one delivery point exists at a city gate, the delivery capacity at each point may add up to more than the maximum daily delivery obligation. The arrangement specified by the Tariff permits the distributor to have the advantage of diversity at the several delivery points. The form of service agreement attempts to explain this matter in Article II, which states in part:

"The maximum quantity of gas deliverable by Seller to Buyer hereunder in any one day at any delivery point shall be the quantity specified for such delivery point in Exhibit "A", provided that the aggregate volume deliverable on any day at all such delivery points hereunder shall not exceed the Maximum Daily Delivery Obligation in Article III hereof."

This arrangement is similar to one the Commission accepted for Texas Eastern Transmission Corporation.

United respectfully requests that for the reasons stated, it be permitted to retain the foregoing arrangement.

(n) The General Term and Condition reference at the end of each rate schedule provided as follows:

"All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except to the extent otherwise indicated."

The Staff commented that in lieu of the general exception, "Except to the extent otherwise indicated", the exceptions might be set forth by identifying number.

This has been done by the following revised sheets of Original Volume No. 1: 5, 7, 9, 11, 13, 15, 18, 19, 21, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 53, 56, 59, 64, 68, 68-D.

[fol. 317]

BEFORE THE FEDERAL POWER COMMISSION

United Gas Pipe Line Company  
FPC Gas Tariff

First Revised Volume No. 1

Original Sheet No. 6

RATE SCHEDULE DG-J

GENERAL SERVICE FOR LARGE VOLUME DISTRIBUTORS  
JACKSON RATE ZONE

1. AVAILABILITY

This rate schedule is available to any natural gas distributor (hereinafter called "Buyer") for the purchase of natural gas from United Gas Pipe Line Company (hereinafter called "Seller") for resale in a Billing Area Unit located in Seller's Jackson Rate Zone when Buyer has executed with Seller a Service Agreement for the purchase of natural gas for such Billing Area Unit.

2. APPLICABILITY AND CHARACTER OF SERVICE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale in such Billing Area Unit, except such natural gas as is purchased for resale for Large Volume Industrial Use Only under other rate schedules available to Buyer under this tariff. Deliveries of gas hereunder shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

3. RATE

20¢ per Mcf for all gas delivered during the billing month up to that number of Mcf obtained by multiplying the Billing Demand for the month by 8.

15¢ per Mcf for all gas delivered during the billing month in excess of the number of Mcf billed at 20¢ per Mcf.



#### 4. MINIMUM BILL

The minimum bill to Buyer for any billing month for service in each Billing Area Unit under this rate schedule shall be 60¢ per Mcf of the Billing Demand in effect for the billing month.

Issued By: A. D. Greene, Vice President

Issued On: December 1, 1954      Effective: August 1, 1954

[fol. 318] United Gas Pipe Line Company

FPC Gas Tariff

First Revised Volume No. 1

Original Sheet No. 7

#### RATE SCHEDULE DG-J

GENERAL SERVICE FOR LARGE VOLUME DISTRIBUTORS

JACKSON RATE ZONE

(Continued)

#### 5. BILLING DEMAND

The Billing Demand for each Billing Area Unit shall be the maximum volume of gas taken under this rate schedule by Buyer for each such Billing Area Unit in any one day during the 12 months' period ending with the last day of the current billing month, but not less than 3,000 Mcf. The greatest day's delivery during any month at a point where gas is delivered through a positive meter or meters without a volume and pressure gauge, shall be assumed to be 0.053 times the volume of gas delivered by Seller to Buyer at such point during such month.

Provided, if and when breaks in Buyer's facilities cause an extraordinary demand on Seller, which is in excess of the demand which Buyer would otherwise have made on Seller, the extra volume of natural gas delivered on account of such extraordinary demand shall not be included in determining the Billing Demand.

Provided further, that if Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer under this rate schedule on such day or days, up to the Billing Demand

otherwise in effect for such billing month, the Billing Demand shall be reduced by an amount equal to the quotient arrived at by dividing the aggregate number of Mcf of Seller's deficiencies in delivery on such day or days by the number of days in such month.

### 6. MEASUREMENT BASE

Refer to Section 1.3 of the General Terms and Conditions.

### 7. HEAT CONTENT

Refer to Section 2.2 of the General Terms and Conditions.

### 8. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this First Revised Volume No. 1 are applicable to this rate schedule and are made a part hereof except Sections 2.1 and 3.4:

Issued By: A. D. Greene, Vice President

Issued On: December 1, 1954 Effective: August 1, 1954

[fol. 319]

BEFORE THE FEDERAL POWER COMMISSION

(Stamp)  
Superseded

United Gas Pipe Line Company  
FPC Gas Tariff  
Original Volume No. 1

Original Sheet No. 51

RATE SCHEDULE PL1  
PIPE LINE SERVICE FOR  
TEXAS EASTERN TRANSMISSION CORPORATION

### 9. AVAILABILITY

This Rate Schedule is available to Texas Eastern Transmission Corporation (hereinafter called "Buyer") for the purchase from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at a delivery point

located south of but near Kosciusko, Mississippi, for resale, where Buyer has executed with Seller a Service Agreement.

## 2. APPLICABILITY AND CHARACTER OF SERVICE

This Rate Schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under a Service Agreement executed for service under this Rate Schedule. Deliveries of gas hereunder, up to the Maximum Daily Quantity specified in the Service Agreement, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

## 3. RATE

For natural gas service rendered to Buyer each month under this Rate Schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

### (a) Demand Charge

Per MCF of Maximum Daily Quantity in effect during the billing month \$1.30 per month

### (b) Commodity Charge

Per MCF of natural gas delivered 12.5¢

## 4. MINIMUM BILL

The annual minimum bill for a contract year shall consist of (a) the sum of all the monthly Demand Charges during such contract year, plus (b) an amount equal to 12.5¢ multiplied by the product of 72% of the Maximum Daily Quantity in effect during the contract year, and 365.

Issued By: A. D. Greene, Vice President

Issued On: July 3, 1952

Effective: Aug. 3, 1952



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(Stamp)  
SupersededUnited Gas Pipe Line Company  
FPC Gas Tariff

Original Volume No. 1

Original Sheet No. 52

## · RATE SCHEDULE PL1

## PIPE LINE SERVICE FOR

TEXAS EASTERN TRANSMISSION CORPORATION

(Continued)

## 4. MINIMUM BILL (continued)

If the Maximum Daily Quantity has been changed during the contract year, the Maximum Daily Quantity to be utilized in computing the annual minimum bill shall be the weighted average of the Maximum Daily Quantities in effect during the contract year, giving effect to the number of months during which each Maximum Daily Quantity was in effect.

A contract year shall consist of a period of 12 consecutive months beginning on the first day of the month following the day of first delivery under the Service Agreement and each anniversary thereafter.

Seller shall, within 60 days from the end of a contract year, render to Buyer a bill for any additional amounts payable by reason of the annual minimum bill, and Buyer shall make payment to Seller therefor within 60 days from the date of billing.

## 5. MAXIMUM DAILY QUANTITY

The Maximum Daily Quantity shall be the maximum volume of gas as specified in the Service Agreement which Seller is obligated to deliver to Buyer under this Rate Schedule and Buyer is entitled to receive on any one day.

## 6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS

If Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas

requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then:

- (a) The Demand Charge for such billing month shall be reduced by an amount equal to the product of 4.27¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days, and
- (b) the annual minimum bill during any contract year in which such month or months occur, shall be reduced by an amount equal to the product of 12.5¢ and the total aggregate number of MCF of Seller's deficiencies in delivery on such day or days during the contract year, in addition to the reduction in Demand Charges effected in (a) above.

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(Stamp)  
Superseded

United Gas Pipe Line Company

FPC Gas Tariff

Original Volume No. 1

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RATE SCHEDULE PL1  
PIPE LINE SERVICE FOR  
TEXAS EASTERN TRANSMISSION CORPORATION  
(Continued)

7. INITIAL PERIOD

Any gas delivered under this Rate Schedule prior to the commencement of the first contract year shall be paid for by Buyer at the rate of 16.77¢ per MCF.

8. MEASUREMENT BASE

A "cubic foot of gas", for the purpose of measurement of the gas delivered hereunder, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of ten (10) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch atmospheric

pressure and at a base temperature of sixty (60) degrees Fahrenheit.

For the purpose of measurement and computation of the gas delivered hereunder the atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch regardless of the actual atmospheric pressure at which the gas is delivered and measured.

Sections 1.3 and 3.2 of the General Terms and Conditions shall not apply to this Rate Schedule.

## 9. HEAT CONTENT

Refer to Section 2.1 of the General Terms and Conditions.

## 10. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions contained in this Original Volume No. 1 are applicable to this Rate Schedule and are made a part hereof except ~~to the extent otherwise indicated~~. *Sections 1.3, 2.2, 3.2, and 3.3.* (Italicized material handwritten)

Issued By: A. D. Greene, Vice President

Issued On: July 3, 1952

Effective: Aug. 3, 1952

[fol. 322]

BEFORE THE FEDERAL POWER COMMISSION

(Italicized material handwritten)

*G 2503—USCA for Dist. of Col. Circuit  
Litigation #12895*

*G 2503 et al DC-L, & #14081*

United Gas Pipe Line Company

FPC Gas Tariff

First Revised Volume No. 1

Original Sheet No. 25

RATE SCHEDULE PL-J

PIPE LINE SERVICE

JACKSON RATE ZONE

## 1. AVAILABILITY

This rate schedule is available to any natural gas pipeline company (hereinafter called "Buyer") for the purchase



from United Gas Pipe Line Company (hereinafter called "Seller") of natural gas at delivery points located in Seller's Jackson Rate Zone, for resale after transmission through Buyer's transmission system, where Buyer has executed with Seller a Service Agreement.

## 2. APPLICABILITY AND CHARACTER OF SERVICE

This rate schedule shall be applicable to all natural gas delivered by Seller to Buyer for resale under each Service Agreement executed for service under this rate schedule. Deliveries of gas hereunder, up to the Maximum Daily Quantity, shall be firm gas and shall not be subject to curtailment or interruption except as provided in Sections 11 and 12 of the General Terms and Conditions.

## 3. RATE

For natural gas service rendered to Buyer each month under this rate schedule, Buyer shall pay Seller the sum of a Demand Charge and a Commodity Charge determined as follows:

### (a) Demand Charge

Per Mcf of Maximum Daily Quantity in effect during the billing month \$1.03 per month

### (b) Commodity Charge

Per Mcf of natural gas delivered 12.0¢

## 4. MINIMUM BILL

The annual minimum bill for a contract year shall consist of (a) the sum of all the monthly demand charges during such contract year, plus (b) an amount equal to the above commodity charge per Mcf multiplied by the product of 72% of the Maximum Daily Quantity in effect during the contract year, and 365.

Issued By: A. D. Greene, Vice President

Issued On: December 1, 1954 Effective: August 1, 1954

[fol. 323] United Gas Pipe Line Company  
FPC Gas Tariff

First Revised Volume No. 1

Original Sheet No. 26

**RATE SCHEDULE PL-J**  
**PIPE LINE SERVICE**  
**JACKSON RATE ZONE**  
(Continued)

**4. MINIMUM BILL (Continued).**

A contract year shall consist of a period of 12 consecutive months beginning on the first day of the month following the day of first delivery under the Service Agreement and each anniversary thereafter.

For the first contract year ending after August 1, 1954, the minimum bill shall be the demand charges computed under superseded Rate Schedule PL-1 to August 1, 1954 and under this rate schedule thereafter, and the commodity charge for 72% of the Maximum Daily Quantity times 365 weighted for the number of days Rate Schedule PL-1 and this rate schedule were in effect respectively.

If the Maximum Daily Quantity has been changed during the contract year, the Maximum Daily Quantity to be utilized in computing the annual minimum bill shall be the weighted average of the Maximum Daily Quantities in effect during the contract year, giving effect to the number of months during which each Maximum Daily Quantity was in effect.

Seller shall, within 60 days from the end of a contract year, render to Buyer a bill for any additional amounts payable by reason of the annual minimum bill, and Buyer shall make payment to Seller therefor within 60 days from the date of billing.

**5. MAXIMUM DAILY QUANTITY**

The Maximum Daily Quantity shall be the maximum volume of gas as specified in the Service Agreement which Seller is obligated to deliver to Buyer under this rate schedule and Buyer is entitled to receive on any one day.

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[fol. 324] United Gas Pipe Line Company

FPC Gas Tariff

First Revised Volume No. 1

Original Sheet No. 27

**RATE SCHEDULE PL-J**

**PIPE LINE SERVICE**

**JACKSON RATE ZONE**

(Continued)

**6. DEMAND CHARGE AND ANNUAL MINIMUM BILL ADJUSTMENTS**

If Seller, after being afforded a reasonable opportunity to do so, was unable to deliver to Buyer, during any one or more days during the billing month, the quantities of gas requested by Buyer on such day or days, up to the Maximum Daily Quantity in effect for such billing month, then:

- (a) The demand charge for such billing month shall be reduced by an amount equal to the product of 3.4¢ and the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days, and
- (b) the annual minimum bill during any contract year in which such month or months occur, shall be reduced by an amount equal to the product of 12.0¢ and the total aggregate number of Mcf of Seller's deficiencies in delivery on such day or days during the contract year, in addition to the reduction in demand charges effected in (a) above:

**7. MEASUREMENT BASE**

Refer to Section 1.3 of the General Terms and Conditions.

**8. HEAT CONTENT**

Refer to Section 2.1 of the General Terms and Conditions.

**9. GENERAL TERMS AND CONDITIONS**

All of the General Terms and Conditions contained in this First Revised Volume No. 1 are applicable to this rate



schedule and are made a part hereof except Sections 2.2 and 3.3.

Issued By: A. D. Greene, Vice President

Issued On: December 1, 1954      Effective: August 1, 1954

[fol. 325]

SUPREME COURT OF THE UNITED STATES

Nos. 691, 694, and 695, October Term, 1957

UNITED GAS PIPE LINE COMPANY, Petitioner,

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION; CITY OF MEMPHIS, TENNESSEE; MISSISSIPPI VALLEY GAS COMPANY; *et al.*;

FEDERAL POWER COMMISSION, Petitioner,

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION, *et al.*; and TEXAS GAS TRANSMISSION CORPORATION and SOUTHERN NATURAL GAS COMPANY, Petitioners,

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION; CITY OF MEMPHIS, TENNESSEE; and MISSISSIPPI VALLEY GAS COMPANY.

ORDER ALLOWING CERTIORARI—February 3, 1958

The petitions herein for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit are granted. The cases are consolidated and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petitions shall be treated as though filed in response to such writs.

February 3, 1958